Internal Revenue Service

Department of the Treasury

Washington, DC 20224

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SIN 4941.04-00
4942.03-05
4945.04-04
No third party contact

Contact Person:

Telephone Number:

In Reference to:
OP:E:EO:T:1

Date:
JAN 7 1999

Employer Identification Number:
Key District:

Legend:

X =

Dear Taxpayer:

This ruling revokes and supersedes our prior ruling that was issued to you as PLR 9516047 on January 23, 1995. The ruling was issued in response to your letter dated June 6, 1994 regarding the establishment of a program to provide employer-related disaster relief and emergency hardship grants and loans to employees of X and its subsidiaries.

The June 6, 1994 request indicated that you are exempt under section 501(a) of the Internal Revenue Code as an organization described in section 501(c)(3) and classified as a private foundation under section 509(a).

You are a trust. X is a for profit enterprise. Your trustee is a subsidiary of X. X and its subsidiaries are your sponsors and, as such, they provide your support. An advisory committee that constitutes your directors and principal officers is selected by the Chairman of the Board of Directors of X and they represent officers of X and its subsidiaries. Your directors select your committee members. X and its subsidiaries are disqualified persons within the meaning of section 4946 of the Code with respect to you.

You established and administer an employee assistance program to provide relief to current and future full-time and part-time employees and retirees of X and its subsidiaries and their eligible dependents. You also provide relief to your employees. Individuals who are disqualified persons with respect to you within the meaning of section 4946 of the Code are not eligible. Retirees are defined as those who have reached retirement age and are participating in X's and its subsidiaries'

post-retirement medical and/or life insurance plans. The eligible class of recipients encompasses 40,000 persons.

Your program has two components: Disaster Assistance and Employee Hardship Grants.

You state that employees who have been the victims of declared federal, state or local disasters such as fires, floods, hurricanes, tornados, acts of war, and similar events shall be eligible for disaster assistance. Disaster assistance may include both cash grant advances as well as in-kind goods such as food, clothing, generators, outdoor grills, and similar supplies.

You state that Disaster Assistance is administered by local Coordinators appointed by your officers and directors. Some or all of the Coordinators are employees of X and its subsidiaries. However, Coordinators are advised that, when administering the disaster aid, they are acting as your agents and not as employees of X and its subsidiaries. Coordinators are authorized to disburse Disaster Assistance funds to an employee based on the Coordinator's reasonable belief that the employee has an immediate need for such assistance arising from the disaster. Funds may be used by the employee to provide food, clothing, temporary housing, repairs, medical care, funeral services, and other critical needs arising from a disaster. Because of the urgent action often required in disaster situations, Coordinators are required to collect only a minimum amount of information from the applicants. Information requested will include name, address, telephone number, social security number, a brief description of the loss suffered, the type and amount of assistance needed, and the amount of assistance actually granted. Coordinators will also verify that the individual is an employee of X and/or its subsidiaries.

You state that in the event that funds are limited, Coordinators will use their best efforts to ensure that the most critical needs are met first. In the event that an employee is incapacitated, the Coordinator may provide relief to a family member or other representative on behalf of the employee, or may pay third-party providers as is reasonably required in the discretion of the Coordinator.

You state that recipients of funds are required to maintain receipts or other records that are reasonable under the circumstances to document their use of funds. Recipients are required to provide a summary of those expenditures and the supporting documentation to you within a reasonable period following the date of disbursement. Recipients are required to return any unused funds or funds that have been used for purposes other than those for which they were granted.

You state that recipients are required to repay funds within twelve months from the date of disbursement except for any part that is waived by you pursuant to an employee hardship grant.

You state that your Employee Hardship Grants program provides assistance to employees experiencing severe financial need on account of uninsured losses caused by a declared federal, state or local disaster, or those other than disaster victims with insufficient income to maintain a minimum standard of living for reasons beyond their control. Assistance is provided in the form of grants or in the form of low or no interest loans.

You state that your officers or directors appoint a Grant Review Committee (GRC) to review and approve applications for Employee Hardship Grants. The GRC is comprised of persons who are employed by X or its subsidiaries in specific job categories. No member of the GRC is a member of the Employee Relief Steering Committee (ERSC) or the Employee Relief Distribution Committees (ERDCs). Applications are submitted to the GRC by the ERDCs on a "blind basis" so that the GRC will be unable to identify the applicant. Records are maintained as required by Revenue Ruling 56-304, 1956-2 C.B. 306.

You state that in approving grants, the GRC must make a finding of financial hardship based upon a determination that the potential recipient's available cash, assets that can be disposed of without causing further personal hardship, and anticipated cash flow (income, insurance proceeds, etc.) from all sources can reasonably be expected to be insufficient to provide for timely retirement of existing obligations and the continuing basic living requirements (food, housing, clothing, medical care, etc.). In making its determination, the GRC will consider evidence of the applicant's financial condition such as income, expenses, other financial obligations, current assets, expected insurance proceeds, and the availability of other sources of funding. The GRC may require the beneficiary to obtain credit, financial, or other counselling as a condition of the Grant.

You state that the ERSC acts as the oversight committee responsible for recommending policy and ensuring the program operates as intended. Various positions/areas of X and its subsidiaries are represented on the ERSC. The ERSC is not involved with the distribution of relief to employees or the review of grant applications, but is available to provide guidance to members of the GRC and the ERDCs.

You state that the ERDCs are an expansion of the local Coordinators described above. There is an ERDC for each state in which X has a presence. The members of the ERDCs are responsible for providing "grant applications" to applicants, reviewing the

applications, and disbursing the advances to applicants if they qualify. When an applicant turns in his/her grant advance application, he/she is provided with a grant application and instructed to complete it and return it to the ERDC within six months. Members of the ERDC assemble the information on the grant application in a format that allows the GRC to do a review on a blind basis. The applications are reviewed and a determination is made to either provide a grant or deny it. The applicant is notified in either situation. In the event that a grant is approved, it may be for an amount that is less than, equal to or greater than the grant advance amount (if any), but will not exceed $5,000. In the event that a grant has been denied and the applicant has been previously issued a grant advance, the applicant will be instructed to return the advance to the Foundation. If the applicant is not financially able to return the advance in its entirety, a repayment plan will be established that will allow the applicant to pay back the advance over a period of time, most likely not to exceed twelve (12) months. Each ERDC has as members persons who are employed by X or its subsidiaries in specific job categories.

You state that your directors select members of these committees based on their experience with disaster and hardship issues, leadership ability, knowledge of the structure and operation of X and its subsidiaries, knowledge of your structure and operation, area of expertise with regard to X and its subsidiaries, and commitment to the idea for which the program is being established. Your directors select members for these committees that will result in equitable representation of all eligible participants. No more than fifty percent (50%) of the members of the GRC, ERSC and ERDCs will be key employees of X and its subsidiaries within the meaning of section 416(i) of the Code.

You state that committee members will be advised that in reviewing grant documents, they are acting as your agents and not as employees of X and its subsidiaries. You maintain all records of grant applications and committee actions. Grants, loans, and information contained in grant applications shall not be used by X and its subsidiaries in any employment decision concerning an employee.

You state that neither continued employment with X and/or its subsidiaries nor any length of service or position with them will be a criterion for eligibility for a grant. Grants are not terminated if an employee leaves the employ of X and/or its subsidiaries. Loans are not accelerated if an employee leaves the employ of X and/or its subsidiaries. Grants/loans made during any 12-month period will not disproportionately favor key

employees of X and/or its subsidiaries as defined in section 416(i) of the Code.

You state that the maximum grant/loan amount per eligible participant annually will be $5,000. The grant/loan shall not exceed the amount necessary to meet the financial hardship. All grant recipients will receive a letter from you indicating that you, and not X and/or its subsidiaries, are making the grant. Applicants who do not meet the criteria will be so notified.

You state that you and X and its subsidiaries use reasonable efforts to ensure that all employees are aware of your program. X's and its subsidiaries' employee handbook includes a brief notice concerning your program and the name, address, and telephone number of your contact person. Your program is also communicated in periodic internal publications of X and its subsidiaries; and in a wallet card provided to each employee and retiree. The wallet card will contain a "hotline" telephone number and details about the program. In all communications with employees, the program is clearly identified as your program and not that of X and its subsidiaries. Employees are advised that Disaster Assistance and Employee Hardship Grants are provided solely at your discretion through a selection process carried out by the Committee. You mail a letter to eligible participants annually containing information about the program, such as criteria for the awards, the application, selection, and awards process and the structure and purpose of the committees. The letter also includes instructions on how to make contributions to the program, at both the time the letter is received and at the time of a disaster.

You state that you solicit contributions annually and when state and federally classified disasters occur. You accept contributions from X and its subsidiaries, their directors, shareholders, customers, and vendors. You do not accept contributions earmarked for specific individuals. With respect to relief supplies, you accept as donations those items for which there exists a need. This would include not only food, water and clothing but items to be used and returned such as chain saws, generators, outdoor grills, etc.

Based on the information you furnished, we ruled in our January 23, 1995 letter that:

1. The establishment and administration of the program furthers charitable purposes within the meaning of section 501(c)(3) and section 170(c)(2)(B) of the Code.

2. Since your program is operated in a manner which is consistent with sections 501(c)(3) and 170(c)(2)(B) of the

Code and any indirect benefit received by X and its subsidiaries, as disqualified persons, is incidental, grants and disaster assistance distributed by you pursuant to the program will not result in acts of self-dealing within the meaning of section 4941(d)(1).

3. Since grants/loans will not be awarded to disqualified persons, as defined in section 4946(a) of the Code, and such grants/loans are paid to accomplish section 170(C)(2)(B) purposes, such grants/loans will be qualifying distributions within the meaning of section 4942(g)(1)(A)(i).

4. Since your program will result in qualifying distributions made for a section 170(c)(2)(B) purpose, any payment made in furtherance thereof is not a taxable expenditure under section 4945(g) of the Code.

1. Charitable Purposes and Sections 501(c)(3) and 170(c)(2)(B) of the Code.

Section 501(c)(3) of the Code provides, in part, for the exemption from federal income tax of organizations that are organized and operated exclusively for, among others, charitable purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 170(c)(2)(B) of the Code provides that for purposes of section 170, the term "charitable contribution" means a contribution or gift to or for the use of a corporation, trust, or community chest, fund, or foundation organized and operated exclusively for, among others, charitable purposes. Subparagraph (C) adds "no part of the net earnings of which inures to the benefit of any private shareholder or individual."

Section 1.501(a)-1(c) of the Income Tax Regulations defines private shareholder or individual within section 501 as persons having a personal and private interest in the activities of the organization.

Section 1.501(c)(3)-1(a)(2) of the regulations defines the term "exempt purpose or purposes" as any purpose or purposes specified in section 501(c)(3), as defined and elaborated in paragraph (d) of this section.

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations provides that an organization is not organized or operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. Thus, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or

his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.

Section 1.501(c)(3)-1(d)(2) of the regulations provides, in relevant part, that the term "charitable" is used in section 501(c)(3) of the Code (and, thus, in section 170(c)(2)(B)) in its generally accepted legal sense. Such term includes, among other things, relief of the poor and distressed or of the underprivileged.

Section 1.170A-4A(b)(2)(ii)(D) of the regulations defines needy as being a person who lacks the necessities of life, involving physical, mental, or emotional well-being, as a result of poverty or temporary distress.

Section 1.501(c)(3)-1(c)(1) of the regulations provides that an organization will be regarded as operated exclusively for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

In Better Business Bureau of Washington, D.C., Inc. v. United States, 326 U.S. 279 (1945), the Court held that the presence of a single non-exempt purpose, if substantial in nature, will preclude exemption regardless of the number or importance of statutorily exempt purposes.

Revenue Ruling 75-199, 1975-1 C.B. 160, provides that an organization that restricts its membership to individuals of good moral character and health belonging to a particular ethnic group residing in a stated geographical area and provides sick benefits to members and death benefits to their beneficiaries is not exempt under section 501(c)(4) of the Code (and by extension is not exempt under section 501(c)(3).) The organization's income is derived principally from membership dues and is used for the payment of benefits and operating expenses. The revenue ruling further states that the membership organization described is essentially a mutual, self-interest type of organization. Its income is used to provide direct economic benefits to members and any benefit to the larger community is minor and incidental.

Revenue Ruling 81-58, 1981-1 C.B. 331, amplifies Revenue Ruling 75-199, supra. Revenue Ruling 81-58 describes an association composed of officers of a police department in a particular community. The association was created for educational purposes and to provide a lump sum payment to each member upon retirement or a lump sum payment to beneficiaries upon the member's death. The membership benefits program

constitutes the association's primary activity. The organization's primary sources of income are from contributions by the general public and through fund raising events. Members are also required to pay a nominal, one-time membership fee upon joining the organization. Its income is used to provide direct economic benefits to members. Although the class of employees benefitted by the organization consists of police officers engaged in the performance of essential and hazardous public services and there is an incidental benefit provided by the organization to the larger community, the fact remains that the primary benefits from the organization are limited to its members. Therefore, the organization is not operated exclusively for the promotion of social welfare within the meaning of section 501(c)(4) (nor by extension for exempt purposes within the meaning of section 501(c)(3).)

A disaster relief or emergency hardship organization may be formed for the benefit of distressed individuals but may also overly serve the private interests of its founders, principals, or even contributors, thereby failing to achieve an exempt purpose despite otherwise good intentions. For example, in Wendy Parker Rehabilitation Foundation, Inc. v. Commissioner, T.C. Memo 1986-348, the organization was created by the Parker family to aid an open-ended class of "victims of coma." However, the organization stated that it anticipated spending 30 percent of its income for the benefit of Wendy Parker, significant contributions were made to the organization by the Parker family, and the Parker family controlled the organization. Wendy's selection as a substantial recipient of funds substantially benefitted the Parker family by assisting with the economic burden of caring for her. The benefit did not flow primarily to the general public as required under section 1.501(c)(3)-1(d)(1)(ii) of the regulations.

X and its subsidiaries are your sponsors and financial supporters. You are controlled by X. You have established and administer an emergency assistance fund to provide relief through grants, loans and in-kind goods to all of X's and its subsidiaries' eligible employees, retirees and those employees' and retirees' dependents who experience severe financial hardship for reasons beyond their control which are not covered by insurance or other resources.

By providing an employee assistance program to provide relief to X's and its subsidiaries' and your employees who have suffered losses due to natural disasters or financial hardship as described above, the program is accomplishing two purposes. The program provides relief to persons who are distressed or otherwise proper objects of charity. However, it also affords X and its subsidiaries with a significant benefit. X and its

subsidiaries benefit because the program provides employees with funds and goods not otherwise available except by reason of their employment by X and its subsidiaries. Employees realize a real and significant benefit because they have recourse to funds in times of financial hardship when other avenues have been exhausted. Potential employees will consider the advantages of such a program while employees will find it an enhancement to financial security and an incentive to continue employment. In this respect, the provision of financial assistance to employees in times of financial hardship, whether from natural disasters or financial emergencies, is a program similar to other employee benefit programs such as sick, life, death and accident benefits. Even though an employee would have no legal right to funds from a disaster or emergency hardship relief fund, employees would be eligible for disaster and hardship benefits provided they are employed by a particular employer upon the occurrence of a disaster or financial emergency and they are in need of such assistance. Essentially, the employee assistance funds operate to provide protection from events that cannot be readily guarded against. In this respect, it is a significant benefit of the job. Moreover, employees of a particular employer that has an employer established, controlled and funded disaster relief benefit program would have an important advantage over other similarly situated victims of the disaster in having access to assured assistance. Thus, the presence of the equivalent of a benefits package, even if not availed of, would constitute a significant benefit derived from an employment relationship. A fund dedicated to employees' welfare is a significant employment benefit in the same way that a life, severance, or legal assistance benefit provides protection and security whether or not used.

While these programs do benefit persons who may be needy or distressed, they also serve the private interests of X and its subsidiaries who utilize such benefit programs to recruit and retain a more stable and productive workforce. In this respect, your employee assistance program accomplishes activities that are not exclusively in furtherance of one or more exempt purposes because they further the private purposes of X and its subsidiaries more than unsubstantially. Through their control and funding, X and its subsidiaries are able to direct your assistance programs to serve their private purposes by limiting disaster and hardship assistance solely to their employees. Any public benefit is significantly outweighed by the private benefit realized by rewarding persons based on their employment with X and its subsidiaries in terms of recruitment, retention, ensuring a stable workforce, and engendering goodwill and loyalty.

While there is some public benefit in ensuring that individuals are provided for in times of disaster or financial

crisis, there is no assurance that selection of beneficiaries solely among employees of a particular employer serves the best interests of the public. The public interest may very well be better served by providing resources to persons who may be in much more dire conditions than persons who happen to be employed by a particular employer. Also, by imposing an employment related eligibility criteria, the general welfare of the public is placed at a disadvantage compared with the significant benefit afforded employees of the particular employer. Therefore, such a program does not further an exempt purpose within the meaning of the regulations under section 501(c)(3) of the Code, Better Business Bureau, supra., and section 170(c)(2)(B).

The benefit conferred on X and its subsidiaries by the disaster relief and emergency hardship program also gives rise to inurement contrary to the requirements under sections 501(c)(3) and 170(c)(2)(B) of the Code which provide for the qualification for exemption and charitable contributions only if, in addition to other factors, "no part of the net earnings of [the organization] inures to the benefit of any private shareholder or individual."

Accordingly, we rule that the establishment and administration of the disaster relief and emergency hardship program, as described, does not further charitable purposes within the meaning of section 501(c)(3) and section 170(c)(2)(B) of the Code.

2. Self-dealing - Section 4941(d)(1) of the Code.

Section 4941(a) of the Code imposes a tax on each act of self-dealing between a disqualified person (as defined in section 4946(a)) and a private foundation.

Section 4941(d)(1)(E) of the Code provides that the term "self-dealing" means any direct or indirect transfer to, or use by or for the benefit of a disqualified person of the income or assets of a private foundation.

Section 4946(a) of the Code defines the term "disqualified person" to include a substantial contributor to the foundation, a foundation manager, and a corporation of which persons described in subparagraphs (A), (B), (C), or (D) own more than 35 percent of the total combined voting power.

Section 53.4941(d)-2(f)(2) of the Foundation and Similar Excise Taxes Regulations provides that the fact that a disqualified person receives an incidental or tenuous benefit from the use by a foundation of its income or assets will not, by itself, make such use an act of self-dealing. Thus, the public

recognition a person may receive arising from the charitable activities of a private foundation to which such person is a substantial contributor, does not in itself result in an act of self-dealing since generally the benefit is incidental and tenuous. For example, a grant by a private foundation to a section 509(a)(1), (2), or (3) organization will not be an act of self-dealing merely because such organization is located in the same area as a corporation which is a substantial contributor to the foundation, or merely because one of the section 509(a)(1), (2), or (3) organization's officers, directors, or trustees is also a manager of or a substantial contributor to the foundation. Similarly, a scholarship or a fellowship grant to a person other than a disqualified person, which is paid or incurred by a private foundation in accordance with a program which is consistent with --

(i) the requirements of the foundation's exempt status under section 501(c)(3),

(ii) the requirements for the allowance of deductions under section 170 for contributions made to the foundation, and

(iii) the requirements of section 4945(g)

will not be an act of self-dealing under section 4941(d)(1) merely because a disqualified person indirectly receives an incidental benefit from such grant. A scholarship or a fellowship grant made by a private foundation in accordance with a program to award scholarships or fellowship grants to the children of employees of a substantial contributor shall not constitute an act of self-dealing if the requirements of the preceding sentence are satisfied.

Section 53.4941(d)-2(f)(4) of the regulations provides examples in which benefits conferred upon disqualified persons by the use of private foundation assets are incidental or tenuous. These examples describe situations in which the general reputation or prestige of a disqualified person is enhanced by a public acknowledgement of some specific donation by him, in which the disqualified person receives some other relatively minor benefit of an indirect nature, or in which such a person merely participates to a wholly incidental degree in the fruits of some charitable program that is of broad public interest in the general community.

Example (1) describes a private foundation which makes a grant to city officials for the purposes of alleviating the slum conditions which exist in a particular neighborhood of the city. Corporation, a substantial contributor to the foundation, is located in the same area in which the grant is to be used.

Although the general improvement of the area may constitute an incidental and tenuous benefit to the corporation, such a benefit by itself will not constitute an act of self-dealing.

Revenue Ruling 73-407, 1973-2 C.B. 383, held that the benefit to a disqualified person was incidental and tenuous where a private foundation conditioned a grant to a public charity on the change of the public charity's name to that of the disqualified person.

Based on the benefit provided to X and its subsidiaries, your disaster relief and emergency hardship program significantly furthers the interests of X and its subsidiaries. The program is associated with employment and accomplishes recruitment and retention incentives and produces a more stable and productive work force. The program affords X and its subsidiaries more than mere public recognition. Such a program cannot be dismissed as merely providing a minor or tenuous benefit. It offers a real and substantial benefit to X and its subsidiaries who are disqualified persons with respect to you by reason of being a substantial contributor, a foundation manager and/or a 35 percent corporation controlled by a substantial contributor or foundation manager. Therefore, since the benefits to disqualified persons are not incidental or tenuous pursuant to section 53.4941(d)-2(f)(2) of the regulations, grants distributed under the program result in acts of self-dealing within the meaning of section 4941(d)(1)(E) of the Code.

Accordingly, we rule that since your program is not operated consistent with sections 501(c)(3) and 170(c)(2)(B) of the Code and benefits to X and its subsidiaries, as disqualified persons, are substantial rather than incidental or tenuous, grants distributed by you pursuant to the program will result in acts of self-dealing within the meaning of section 4941(d)(1).

3 & 4. Qualifying Distributions and Taxable Expenditures - Sections 4942 and 4945 of the Code.

Section 4942(a) of the Code imposes a tax on the undistributed income of a private foundation.

Section 4942(g)(1)(A)(i) of the Code provides, in relevant part, that the term "qualifying distribution" means any amount (including that portion of reasonable and necessary administrative expenses) paid to accomplish one or more purposes described in section 170(c)(2)(B), other than any contribution to an organization controlled (directly or indirectly) by the foundation or one or more disqualified persons (as defined in section 4946) with respect to the foundation.

Section 4945 of the Code imposes a tax on each "taxable expenditure" of a private foundation as defined in section 4945(d) of the Code.

Section 4945(d)(3) of the Code provides that a "taxable expenditure" includes 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 it satisfies the requirements of subsection (g).

Section 4945(d)(5) of the Code provides that the term "taxable expenditure" means any amount paid or incurred by a private foundation for any purpose other than one specified in section 170(c)(2)(B).

Section 4945(g) of the Code provides, in relevant part, 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 of the Treasury, if it is demonstrated to the satisfaction of the Secretary that-

(1) the grant constitutes a scholarship or fellowship grant which would be subject to the provisions of section 117(a) (as in effect on the day before the date of the enactment of the Tax Reform Act of 1986) and is to be used for study at an educational organization described in section 170(b)(1)(A)(ii),

(3) 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 other similar capacity, skill, or talent of the grantee.

Section 53.4945-4(a)(2) of the regulations provides a definition of "grants." It states that for purposes of section 4945, the term "grants" shall include, but is not limited to, such expenditures as scholarships, fellowships, internships, prizes, and awards. Grants shall also include loans for purposes described in section 170(c)(2)(B) and program related investments. Similarly, grants include such expenditures as payments to exempt organizations to be used in furtherance of their exempt purposes.

Section 170(c)(2)(B) of the Code describes, in relevant part, an organization that is organized and operated exclusively for charitable or educational purposes or for the prevention of cruelty to children.

Section 53.4945-6(b)(1)(v) of the regulations provides, in relevant part, that any payment which constitutes a qualifying distribution under section 4942(g) will not be treated as a taxable expenditure under section 4945(d)(5) of the Code.

For the purpose of resolving the issues under sections 4942 and 4945, the determination of whether the employer related hardship program comes within one of the purposes described under section 170(c)(2)(B) of the Code is fundamental. Any amount paid by a private foundation to accomplish any purpose other than one specified in section 170(c)(2)(B) is not a qualifying distribution under section 4942(g)(1)(A) and is a taxable expenditure under IRC 4945(d)(5).

Neither the employer related disaster relief nor the emergency hardship program furthers an exempt purpose within the meaning of section 1.501(c)(3)-1(d)(1)(i) of the regulations and section 170(c)(2)(B) of the Code. Therefore, grants and loans made by you are not qualifying distributions within the meaning of section 4942(g)(1)(A)(i) of the Code. Consequently, since the grants and/or loans do not accomplish a purpose described in section 170(c)(2)(B) of the Code and do not result in qualifying distributions pursuant to section 4942(g), such payments made by you are taxable expenditures pursuant to section 4945(d)(5) of the Code.

Accordingly, we rule that grants and loans paid by you under the disaster relief and emergency hardship program do not accomplish an exempt purpose under section 170(c)(2)(B) of the Code, are not qualifying distributions within the meaning of section 4942(g)(1)(A)(i) and are taxable expenditures under section 4945(d).

5. Employer Related Scholarship Programs and Employer Related Disaster Relief and Emergency Hardship Programs.

With respect to scholarship programs provided by private foundations to children of employees of substantial contributors, section 53.4941(d)-2(f)(2) of the regulations states that such grants will be considered incidental or tenuous only if the program is consistent with the foundation's exempt status, the deductibility of contributions under section 170, and the requirements under section 4945(g). There is no similar specific provision for disaster relief and hardship programs.

Section 4945 of the Code addresses taxes on taxable expenditures of private foundation. Section 4945(d)(3) provides that "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). Subsection (g)(1) provides that subsection (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 demonstrated to the satisfaction of the Secretary that the grant constitutes a scholarship or fellowship grant which would be subject to the provisions of section 117(a) (as in effect on the day before the date of the enactment of the Tax Reform Act of 1986) and is to be used for study at an educational organization described in section 170(b)(1)(A)(ii).

Revenue Procedure 76-47, 1976-2 C.B. 670, and Revenue Procedure 80-39, 1980-2 C.B. 772 provide guidelines under which employer-related private foundations that make scholarship or educational loans will be considered to further a purpose consistent with section 4945 of the Code. The key criterion is that scholarships and educational loans are awarded to no more than 10 percent of the number of employees of a particular employer who were eligible, were applicants for such grants, and were considered by the selection committee in selecting the recipients of grants in that year. This criterion assures that the scholarships or loans do not overly serve the private interests of the employer because there is no significant probability that employment will make scholarships or loans available to a qualified employee.

However, your disaster relief and hardship programs are available to all employees who satisfy the eligibility criteria and are limited only by the amount of funding that X and its subsidiaries may provide. Thus, the principles set forth in the area of scholarships and educational loans is not directly applicable to your situation since there is a high probability that employment will make disaster and hardship assistance available and there is no specific exception for such programs under chapter 42 as there is for scholarships.

This ruling does not address the applicability of any section of the Code or regulations to the facts submitted other than with respect to the sections described above.

The Assistant Commissioner (Employee Plans and Exempt Organizations) has granted you relief under section 7805(b) of the Code from retroactive application of this ruling for disaster relief or emergency hardship payments made up to six months from the date of this ruling and for any such payments made after six months from the date of this ruling under a legal obligation incurred prior to the end of the six month period.

We are providing your key District Director with a copy of this ruling. You should keep a copy for your permanent records.

If you have any questions about this letter, please contact the person whose name and telephone number are shown in the heading. For other matters, including questions concerning reporting requirements, please contact your key District Director.

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

Sincerely,

Marvin Friedlander

Marvin Friedlander
Chief, Exempt Organizations
Technical Branch 1