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TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

Date:

Contact Person:

MAY 26 2004

Identification Number:

UIL: 4942.00-00

Telephone Number:

Employer Identification Number:

Legend:

B=

x=

Dear :

This is in response to your ruling request that a set-aside of funds be recognized as satisfying the suitability test of section 4942(g)(2)(B)(i) of the Internal Revenue Code and section 53.4942(a)-3(b)(2) of the Foundation and Similar Excise Taxes Regulations.

You have been recognized as exempt under section 501(c)(3) of the Code and classified as a private foundation under section 509(a) from the time you were formed in 2002.

Your primary purpose is to supply tuition to academically qualified and financially disadvantaged individuals to attend a college or university in B. You learned that in B everyone who qualifies academically may receive tuition from B if the individual qualifies for financial aid. This leaves a niche group to be aided by you: individuals who qualify academically, who do not meet B's standards for financial aid but who do need financial help to make their attendance possible.

Presently you have located this group of individuals among Junior Colleges. Most of these individuals are older and have returned to the academic world to complete their education. Most of these individuals have been out of work for some time and require financial aid although they have income that exceeds the maximum standards set by B for such aid. Unfortunately, the grantees you have in mind will not know until about March of if they will be admitted to a college or university. Additionally, only when they are admitted to a college or university will they learn the cost of the tuition to attend the college or university.

You were unable to pay tuition for anyone in because no one met your requirements. Only in the spring of will those individuals be in a position to know if they will qualify to attend a college or university for which you will pay their tuition.

You filed Form 990-PF for the year indicating, among other things, that there was an undistributed amount of x that must be distributed prior to the end of year.

Your request for approval to set-aside the amount of x for the year concerns a one-time set-aside, not a permanent or annual set-aside. You stated that you have no need for such a set-aside in the future. You further stated that your program makes no promises to make future grants, and you expressly tell your grantees that they should not expect further funding.

Additional information received stated that you will distribute the set-aside funds no later than . You expect to make as many grants as will require the distribution of x plus at least a similar amount during the year . You expect that the amount set-aside for the year , will be used by you to fund the tuition grants within the 60 months from the time the amount is set-aside.

Section 509(a) of the Code defines the term "private foundation" as a domestic or foreign organization described in section 501(c)(3), including a trust.

Section 4942(g)(1) of the Code defines "qualifying distribution" as (a) any amount paid to accomplish one or more purposes described in section 170(c)(2)(B), other than any contribution to (i) an organization controlled by the foundation or one or more disqualified persons or (ii) a private foundation which is not an operating foundation, except as otherwise provided; or (b) any amount paid to acquire an asset used directly in carrying out one or more purpose described in section 170(c)(2)(B).

Section 4942(g)(2)(A) of the Code provides that for all taxable years beginning on or after January 1, 1975, an amount set-aside for a specific project which comes within one or more purposes described in section 170(c)(2)(B) may be treated as qualifying distribution if it meets the requirements of subparagraph (B) of section 4942(g)(2).

Section 4942(g)(2)(B)(i) of the Code provides that an amount set-aside for a specific project may be treated as a qualifying distribution if, at the time of the set-aside, the foundation establishes to the satisfaction of the Secretary that the amount will be paid for the specific project within five years, and the project is one which can be better accomplished by such set-aside rather than by immediate payment of funds (the "suitability test").

Section 53.4942(a)-3(b)(1) of the Foundation and Similar Excise Taxes Regulations provides that an amount set-aside for a specific project that is for one or more of the purposes described in section 170(c)(1) or (2) may be treated as qualifying distribution in the year in which set-aside (but not in the year in which actually paid), if the requirements of section 4942(g)(2) and this paragraph are satisfied. The requirements of this paragraph (b) are satisfied if the private foundation establishes to the satisfaction of the Commissioner that the amount set-aside will be paid for the specific project within 60 months after it is set-aside, and (i)

the set-aside satisfies the suitability test, or (ii) the foundation satisfies the cash distribution test.

Section 53.4942(a)-3(b)(2) of the regulations provides that the "suitability test" prescribed by Code is satisfied where the specific project is one in which relatively long-term grants or expenditures must be made in order to assure the continuity of the particular charitable projects or program-related investments, or where grants are made as part of a matching-grant program.

Revenue Ruling 75-511, 1975-2 C.B. 450 describes a private foundation whose primary activity was the granting of educational scholarships. The grants were made on an annual basis renewable each year for a 3-year period, provided the student getting the grant maintained a certain academic level of achievement. The foundation requested approval to set-aside in a separate account the total amount expected to be paid out to each student in the year in which the initial grant was made. Thereafter, when the grant was renewed, payment would be made out of the student's set-aside account. The Service held that the foundation's scholarship program was one that was regularly carried on as part of its normal, ongoing charitable activities. It also found that in most instances in its prior years, the foundation was able to pay the annual renewal amount out of current income. The foundation did not show any compelling reasons why it could not continue to finance the grants in this manner. The Service therefore concluded that the foundation failed to show that its grant-making program could be better accomplished by the use of set-asides than by immediate payment of funds, and therefore denied its request.

Your case is distinguished from the organization in Rev. Rul. 75-511, in that you are a newly created organization; students who would benefit from your grants could not be identified during the period the grants were intended to be made; your request is for a one-time set-aside, not a permanent or annual set-aside; your program makes no promise to make future grants, and you expressly tell your grantees not to expect future funding.

You have stated that your proposed set-aside will accomplish a purpose described in section 170 of the Code, specifically, the promotion of education, which is in furtherance of your exempt purposes. The amount set-aside will be used to fund tuition grants for financially disadvantaged students, which serves to advance your exempt purposes. The amount set-aside will be used to fund tuition grants for the students selected by you during the year 2004, which is within 60 months from the date of the set-aside. The set-aside satisfies the suitability test because the special circumstances faced by you and the potential grantees would not allow the funds to be distributed in the taxable year ending , as required under section 53.4942(a)-3(b)(2) of the regulations.

Based on the foregoing, we rule that the set-aside of x specifically devoted to the funding of tuition grants, meets the requirements of section 4942(g)(2)(B)(i) of the Code and section 53.4942(a)-3(b)(2) of the regulations. Accordingly, the set-aside can be treated as a qualifying distribution expended directly for the active conduct of exempt activities for your taxable year.

We direct your attention to section 53.4942(a)-3(b)(4) of the regulations, entitled "Evidence of set-aside." This section provides that a set-aside approved by the Internal Revenue Service

shall be evidenced by the entry of a dollar amount on the books and records of a private foundation as a pledge or obligation to be paid at a future date or dates.

This ruling is conditioned on the understanding that there will be no material changes in the facts upon which it is based.

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,

Debra J. Kaweck
Manager, Exempt
Organizations Technical Group 4