DEPARTMENT OF THE TREASURY 200041033
INTERNAL REVENUE SERVICE JUL 14 2000
WASHINGTON, D.C. 20224

SIN - 4945.04-04; 4945.04-05
No Third Party Contacts

Contact Person:

ID Number:

Telephone Number:

OP:E:EO:T3

Employer Identification Number:

Legend:

X =
Y =
Z =

Dear Applicant:

This refers to your request for approval of your grant procedures under section 4945 of the Internal Revenue Code.

You are exempt from federal income tax as an organization described in section 501(c)(3) of the Code and classified as a private foundation under section 509(a). Your purposes include encouraging those of the X faith towards greater commitment to X observance and way of life by increasing their understanding, appreciation and practice of X traditions, customs and laws.

You will operate a program providing grants to qualified individuals for scholarships and fellowships, prizes and awards, to produce written products, and for sabbatical leave. You will also provide grants to organizations for re-granting to qualified individuals for similar purposes.

You will provide scholarships to students pursuing a degree at an educational institution described in section 170(b)(1)(A)(ii) concentrating in a discipline related to X culture and religion. Funds will be used to pay tuition, living expenses and other related expenses. You will award scholarships on the basis of demonstrated academic achievement and the relevance of the candidate's course of study and career objectives to your charitable purposes. You may also consider financial needs of candidates.

192

You will also provide grants in the form of prizes and awards will be made only to individuals who have demonstrated some past religious, charitable, scientific, educational, artistic, literary or civic achievement that relates to your purposes. Recipients of these grants will be nominated from the general public by experts on their fields.

You will also provide grants to produce a study, report, scholarly publication, or similar written product on X heritage, history, experience, customs and law. In addition, you will provide grants to individuals for the purpose of taking sabbatical leaves to enhance their professional development or leadership capacity in your fields of interest through, for example, travel, study, or writing. Applicants for sabbatical grants must be individuals who are working for and committed to the perpetuation of the X People, Y and the centrality of the Z to the X People or pursuing activities in furtherance of other charitable purposes similar to yours. Grants for sabbatical leave will cover travel, project-related expenses and/or living costs. In addition to the criteria described above, the criteria for selecting grantees for sabbaticals will include the candidate's position in and length of employment by his or her organization (if any), the candidate's stature within the field, and whether the candidate has recently had a sabbatical leave. You expect the candidate to agree to continue his or her work in the same field for a designated period following the sabbatical.

Candidates for individual grants may not be "disqualified persons," within the meaning of section 4946 of the Code, with respect to you. Furthermore, they may not be related to any member of your selection committee or to any of your officers or trustees.

You will make scholarship grant payments directly to the schools. You will request the school to provide you with a statement that the grantee has enrolled in and is attending the school, and to agree to use the grant funds to defray the grantee's tuition expenses. You will require students to submit an annual report on their study, activities, progress, and use of funds at the end of the grant period.

You will promptly investigate any apparent misuse of grant funds or failure to provide required reports. You will withhold further payments to the individual until you have determined that no part of a grant has been misused and until missing reports have been submitted. If a grant recipient does not account for all funds, any unaccounted funds must be returned to you.

You will take all reasonable and appropriate steps to secure the repayment of any diverted funds. You will withhold any further payments until you receive

assurances from a grant recipient that future diversions will not occur. In addition, you will maintain records pertaining to all grants which shall include (a) all information secured to evaluate qualifications of potential grantees; (b) identification of recipients (including any relationship to you); (c) amount and purpose of the grant; and follow-up information in the supervision and investigation of grants.

You will also award grants to organizations to make re-grants to qualifying individuals for travel, study or similar purposes (Initial Grantees). Initial Grantees shall include public charities described in section 509(a)(1), (2) or (3), public charity equivalents described in section 53.4945-5(a)(5) of the Foundations and Similar Excise Taxes Regulations, and exempt operating foundations described in section 4940(d)(2).

In addition, the Initial Grantees may include foreign organizations lacking a history of operations and support necessary to enable you to make a good-faith determination that the organization is described section 509(a)(1), (2), (3) or a private foundation. You will exercise expenditure responsibility with respect to grants awarded to such Initial Grantees pursuant to section 4945(d)(4)(B) of the Code. The grant agreement will be signed by an appropriate officer, director or trustee of the Initial Grantee which will commit to comply with your standards and procedures for making grants to individuals satisfying the requirements of section 4945(g), including the commitments described in section 53.4945-5(b)(3) (i) through (iv) of the regulations and in compliance with the requirements of section 53.4945-5(b)(5) of the regulations.

Your grants selection committee shall be comprised of your trustees and/or independent reviewers who will review grant applications or nominations and select finalists. All awards are subject to approval by the your Board of Trustees.

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

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

(3) as a grant to an individual for travel, study, or other similar purposes by such individual, unless the grant satisfies the requirements of subsection (g),

(4) as a grant to an organization unless –

(A) such organization is described in section 509(a)(1), (2) or (3) or is an exempt operating foundation under section 4940(d)(2), or

(B) the private foundation exercises expenditure responsibility with respect to such grant in accordance with section 4945(h).

Section 4945(g)(1) of the Code 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 is 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 institution described in section 170(b)(1)(A)(ii).

Section 53.4945-4(b)(1) of the regulations provides that in order for a private foundation to establish that its grants to individuals are made on an objective and nondiscriminatory basis, the grants must be awarded in accordance with a program which would be consistent with:

(i) the existence of the foundation's exempt status under section 501(c)(3);

(ii) the allowance of deductions to individuals under section 170 for contributions to the granting foundation; and

(iii) the requirements of subparagraphs (2), (3), and (4) of the paragraph.

Section 53.4945-(4)(b)(2) of the regulations provides in pertinent part that ordinarily selection of grantees on an objective and nondiscriminatory basis requires that the group from which grantees are selected be chosen on the basis of criteria reasonably related to the purposes of the grant. Furthermore, the group from which grantees are to be selected be sufficiently broad so that the awarding of grants to members of such group would fulfill a purpose described in section 170(c)(2)(B).

Section 53.4945-4(b)(3) of the regulations states that the criteria used in selecting grant recipients from the potential grantees should be related to the purpose of the grant.

Section 53.4945-4(b)(4) of the regulations provides that the person or group of persons who select recipients of grants should not be in a position to derive a private benefit, directly or indirectly, if certain potential grantees are selected over others.

Section 53.4945-4(c)(1) of the regulations provides in pertinent part that grants to individuals must be made pursuant to a procedure approved in advance. To secure such approval, a private foundation must demonstrate to the satisfaction of the

Commissioner that–

(i) Its grant procedure includes an objective and nondiscriminatory selection process (as described in paragraph (b) of this section);

(ii) Such procedure is reasonably calculated to result in performance by grantees of the activities that the grants are intended to finance; and

(iii) The foundation plans to obtain reports to determine whether the grantees have performed the activities that the grants are intended to finance.

No single procedure or set of procedures is required. Procedures may vary depending upon such factors as the size of the foundation, the amount and purpose of the grants and whether one or more recipients are involved.

Section 53.4945-4(c)(2) of the regulations provides that with respect to any scholarship or fellowship grants, a private foundation must make arrangements to receive a report of the grantee's courses taken (if any) and grades received (if any) in each academic period. Such a report must be verified by the educational institution attended by the grantee and must be obtained at least once a year. Such a report must be approved by the faculty member supervising the grantee or by another appropriate university official.

Section 53.4945-4(c)(4)(i) of the regulations provides that where the reports submitted under this paragraph or other information (including the failure to submit such reports) indicates that all or any part of a grant is not being used in furtherance of the purpose of such grant, the foundation is under a duty to investigate. While conducting its investigation, the foundation must withhold further payments to the extent possible until any delinquent reports have been submitted.

Section 53.4945-4(c)(4)(ii) of the regulations provides that in cases in which the grantor foundation determines that any part of a grant has been used for improper purposes and the grantee has not previously diverted grant funds to any use not in furtherance of a purpose specified in the grant, the foundation will not be treated as having made a taxable expenditure solely because of the diversion so long as the foundation --

(a) Is taking all reasonable and appropriate steps either to recover the grant funds or to insure the restoration of the diverted funds and the dedication (consistent with the requirements of (b)(1) and (2) of this subdivision) of other grant funds held by the grantee to the purposes

being financed by the grant, and

(b) Withholds any further payments to the grantee after the grantor becomes aware that a diversion may have taken place until it has –

(1) Received the grantee's assurances that future diversions will not occur, and

(2) Required the grantee to take extraordinary precaution to prevent future diversions from occurring.

Section 53.4945-4(c)(6) of the regulations provides that a private foundation shall retain records pertaining to all grants to individuals for purposes described in section 4945(d)(3). Such records shall include:

(i) All information the foundation secures to evaluate the qualification of potential grantees;

(ii) Identification of grantees (including any relationship of any grantee to the foundation sufficient to make such grantee a disqualified person of the private foundation within the meaning of section 4946(a)(1);

(iii) Specification of the amount and purpose of each grant; and

(iv) The follow-up information which the foundation obtains in complying with subparagraphs (2), (3), and (4) of this paragraph.

Section 4945(h) of the Code provides that the expenditure responsibility referred to in subsection (d)(4) means that the private foundation is responsible to exert all reasonable efforts and to establish adequate procedures--

(1) to see that the grant is spent solely for the purpose for which made,

(2) to obtain full and complete reports from the grantee on how the funds are spent, and

(3) to make full and detailed reports with respect to such expenditures to the Secretary.

Section 53.4945-5(b)(3) of the regulations provides that in order to meet the expenditure responsibility requirements of section 4945(h), a private foundation must

require that each grant to an organization be made subject to a written commitment signed by an appropriate officer, director, or trustee of the grantee organization. Such commitment must include an agreement by the grantee--

(i) To repay any portion of the amount granted which is not used for the purposes of the grant,

(ii) To submit full and complete annual reports on the manner in which the funds are spent and the progress made in accomplishing the purposes of the grant, except as provided in paragraph (c)(2) of this section,

(iii) To maintain records of receipts and expenditures and to make its books and records available to the grantor at reasonable times, and

(iv) Not to use any of the funds--

(a) To carry on propaganda, or otherwise to attempt, to influence legislation (within the meaning of section 4945(d)(1)),

(b) To influence the outcome of any specific public election, or to carry on, directly or indirectly, any voter registration drive (within the meaning of section 4945(d)(2)),

(c) To make any grant which does not comply with the requirements of section 4945(d)(3) or (4), or

(d) To undertake any activity for any purpose other than one specified in section 170(c)(2)(B).

Section 53.4945-5(b)(5) of the regulations provides that with respect to a grant to a foreign organization (other than an organization described in section 509(a)(1), (2), or (3) or treated as so described pursuant to paragraph (a)(4) or (a)(5) of this section), subparagraph (3)(iv) or (4)(iv) of this paragraph shall be deemed satisfied if the agreement referred to in subparagraph (3) or (4) of this paragraph imposes restrictions on the use of the grant substantially equivalent to the limitations imposed on a domestic private foundation under section 4945(d). Such restrictions may be phrased in appropriate terms under foreign law or custom and ordinarily will be considered sufficient if an affidavit or opinion of counsel (of the grantor or grantee) is obtained stating that, under foreign law or custom, the agreement imposes restrictions on the use of the grant substantially equivalent to the restrictions imposed on a domestic private foundation under subparagraph (3) or (4) of this paragraph.

Rev. Rul. 77-380, 1977-2 C.B. 419, holds that grants made by a private foundation primarily in recognition of past achievement, with the funds being unrestricted and not earmarked for subsequent travel or study are not taxable expenditures within the meaning of section 4945(d)(3) of the Code.

Based upon the information you submitted, and assuming your program will be conducted as proposed, with a view to providing objectivity and nondiscrimination in the awarding of grants, we rule that your procedures in the awarding of scholarship grants comply with the requirements of section 4945(g)(1) of the Code. Expenditures made in accordance with these procedures will not constitute "taxable expenditures" within the meaning of section 4945(d)(3) of the Code, and as such are eligible for the exclusion from income provided for in section 117(a) of the Code to the extent that such grants are actually used for qualified tuition and related expenses within the meaning of section 117(b)(2) of the Code.

This ruling is conditioned on the understanding that there will be no material change in the facts upon which it is based. It is further conditioned on the premise that no grants will be awarded to your organization's creators, officers, directors, trustees, or members of the selection committee, or for a purpose that is inconsistent with the purposes described in section 170(c)(2)(B) of the Code.

The approval of your grant-making procedures is a one-time approval of your system of standards and procedures for selecting recipients of grants that meet the requirements of section 4945(g)(1) of the Code. Thus, approval will apply to succeeding grant programs only as long as the standards and procedures under which they are conducted do not differ materially from those described in your request.

We also rule that your proposed grant program

(a) is consistent with the continuation of your exempt status as an organization described in section 501(c)(3) of the Code, contributions to which are deductible under section 170;

(b) employs objective and nondiscriminatory criteria for the determination of individual grant recipients and, therefore, qualifies under section 4945(g); and

(c) complies with all other requirements of section 53.4945-4 of the regulations.

(2) A re-grant by an Initial Grantee to an individual under the proposed grant program will not violate the terms of your expenditure responsibility grant agreement with the Initial Grantee, which is required by section 53.4945-5(b)(3)(iv)(c) of the regulations.

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.

Please keep this letter in your permanent records.

Sincerely,

(signed) Robert C Harper, Jr.

Robert C. Harper, Jr.
Manager, Exempt Organizations
Technical Group 3

200