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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

200228034

Date: 4/18/02

Contact Person:

Identification Number:

U.I.L. No.
4945.04-04

Telephone Number:

T:ED:B2

LEGEND:
R =
S =
X =
Y =

Employer Identification Number:

Dear Sir or Madam:

This is in response to X's ruling request dated August 22, 2001, requesting advance approval of its scholarship grants procedures under section 4945(g)(1) of the Code.

X has been recognized exempt under section 501(c)(3) and classified as a private foundation described in section 509(a) of the Code.

X proposes to make scholarship grants each year to one or more secondary school students to enable them to complete a college preparatory boarding school education at a participating preparatory school. As the program matures, X may also make college scholarship grants to one or more of college students at an undergraduate college or university of the students' choice.

X represents that initially there will be four college preparatory boarding schools in state S participating in the program. Later, the program may be expanded to other areas within X's region of operation and to other preparatory schools. Each participating school is a qualifying educational institution within the meaning of section 170(b)(1)(A)(ii) of the Code.

Students entering grades 9-11 of the public schools in R, a rural county in state S, will be eligible to apply for and to be considered for the scholarships. X represents that the selection criteria will include, but will not be limited to, demonstrated academic ability and desire, character, good citizenship, and financial need. X further represents that the grants will be awarded on an objective and nondiscriminatory basis.

The Selection Committee will be composed of the Directors of Admissions (and/or their

representatives) from each of the participating college preparatory boarding schools and X's staff and consultants. The size of the Selection Committee will vary. However, the members from the preparatory schools will always exceed the number of members from X's staff or its consultants. X's Board of Directors will approve the final selection.

A scholarship recipient cannot be related to a member of the Selection Committee, any consultant working for the Foundation, or to any "disqualified person" in relation to X. X represents that neither members of the Selection Committee, nor any "disqualified persons" in relation to X, will be in a position to receive private benefits, directly or indirectly, if certain potential grantees are selected over others.

The scholarship payments will be made directly to the participating college preparatory boarding schools. Each school must agree, in writing, to use the grants to defray the recipient's educational and boarding school expenses or to pay or distribute the funds to or for the benefit of the scholarship recipient only if the student is enrolled and in good standing. Another condition of the scholarship grant will be that the funds will only be used for qualified tuition and related expenses within the meaning of section 117(b)(2) of the Code and for room and board. Finally, no part of a grant, especially college scholarships, will be used to pay for teaching, research, or other services by the scholarship recipient as a condition for receiving the scholarship.

Periodic progress reports showing the courses taken and the grades received will be provided by the participating preparatory schools for each scholarship recipient. The reports will also describe the progress made by the student and report on any academic or disciplinary problems. In cases of serious academic or disciplinary problems, interim reports will be required. A full annual report will also be required for each recipient showing final grades received for the year, the current grade point average and class rank, the student's current good standing status, and advancement to the next grade level.

X's staff and consultants will regularly review the progress reports to ensure that satisfactory progress is being made towards graduation and that the grant funds are being well used to accomplish the purposes of Y, X's scholarship program. X's staff will also periodically review compliance by participating preparatory schools with the written agreements relating to the appropriate use of scholarship grant funds.

X's staff and consultants will investigate all reports of unsatisfactory academic or disciplinary performance. If a scholarship recipient is unable or unwilling to correct deficiencies or to otherwise meet the requirements of the participating school or X, the student will be dismissed from the program. If X determines that all or any part of a scholarship grant is not being used to further the purposes of the grant and Y, X will take one or more of the following actions as required and appropriate: (1) withhold payments to the extent possible during the period of investigation; (2) take steps to recover the grant funds and/or ensure restoration of diverted funds to the purposes of the grant; (3) withhold further payments until the diverted funds are in fact recovered or restored; (4) obtain assurances from the grantee and/or the participating school that future diversions will not occur; and, (5) require the grantee and/or the participating school to take extraordinary precautions to prevent future diversions.

X will retain complete records that will include all information it obtained to evaluate the qualifications of the potential grantees; the identification of grantees (including any relationship of any grantee to X or to an officer or director of X); the purpose and amount of each grant; the terms of payment of each grant; and, any additional information obtained by X as part of the grant administration process. The records will include preparatory school scholarship recipients as well as any subsequent college scholarship grants to preparatory school graduates.

Section 501(c)(3) of the Code provides, in part, for exemption from federal income tax for a corporation organized and operated exclusively for charitable, scientific or educational purposes provided no part of the corporation's net earnings inure to the benefit of any private shareholder or individual.

Section 509(a) of the Code provides that, unless specifically excepted, a domestic or foreign organization described in section 501(c)(3) is a private foundation and subject to the excise taxes of Chapter 42.

Section 4945(a) of the Internal Revenue Code imposes an excise tax on each taxable expenditure made by a private foundation.

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 similar purposes by such individual, unless such grant satisfies the requirements of section 4945(g).

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

Section 53.4945-4(b)(1) of the Foundation and Similar Excise Tax Regulations sets forth standards for determining whether grants to individuals awarded under section 4945(g) of the Code are made on "an objective and nondiscriminatory basis."

Based upon the information submitted and assuming your scholarship programs will be conducted as proposed, with a view to providing objectivity and nondiscrimination in awarding grants, we have determined that your procedures in awarding scholarship grants and educational loans comply with the requirements of sections 4945(g)(1) and (g)(3) of the Code, and that scholarships and loans granted according to these procedures will not be "taxable expenditures" within the meaning of section 4945(d)(3). We have not considered whether grants made under your procedures are excludable from the gross income of recipients under section 117 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).

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)(3). 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.

Any grants or distributions made between the date you were established and recognized as exempt under section 501(c)(3) of the Code and 91 days after the end of your advance ruling period will not be considered taxable expenditures presuming that such grants met the general requirements of section 501(c)(3).

Except as we have ruled above, we express no opinion as to the tax consequences of the transaction 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 questions about tax consequences of your activities, you should keep a copy of this ruling in your permanent records.

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 Yours,

Terrell M. Berkovsky
Manager, Exempt Organization
Technical Group 2