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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

200341024

Date: JUL 18 2003

Contact Person:

Identification Number:

Uniform Issue List: 4945.04-04

Telephone Number:

Legend:
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Dear Sir or Madam:

We have considered your ruling request dated October 31, 2002, in which you requested certain rulings under section 4945 of the Internal Revenue Code ("Code") and section 53.4945-4(a) of the Foundation and Similar Excise Taxes Regulations ("Regulations").

M is a Delaware nonprofit corporation that is recognized as exempt from Federal income taxation under section 501(c)(3) of the Code. M is also a private foundation as described in section 509(a). M was formed in aa by N and O as a national effort to help young people who are currently in the foster care system or who have aged out of the system make a successful transition from foster care to adulthood. M's mission is to bring together people, resources, and focus to help these young people make successful transitions. M has implemented several strategies to accomplish this mission including Youth Engagement.

M plans to provide grants to other tax-exempt entities that meet M's grant criteria. Grant criteria include a commitment to the strategies, and more specifically to Youth Engagement. The entities are expected to be public charities and the grants will be made to carry out activities chosen by the recipients and supervised by them. Proposals may relate to any activity chosen by the recipient that recipient thinks M might be willing to fund. Additionally, there must be an intention to pay stipends to any young person who participates.

Youth Engagement is a program by which these young persons will be provided support and training in youth leadership, personal and strategic planning, communications, and other skills that will allow them to serve as partners and advocates on both the community and

national levels. Youth Engagement will bring young people who are currently in foster care or those who have aged out of the system into a series of decision-making roles including assessing the needs of those in foster care, identifying new forms of services to better meet the needs of children in foster care, identify efforts that support successful transitions to adulthood and serve as informed and empowered advocates for changes in public systems, policies and legislation to ensure opportunities for successful transitions of children in foster care.

Consistent with the Youth Engagement strategy, is the utilization of two programs: the Community Youth Leadership Board ("Community Board") and the National R Board ("National Board"). To ensure a commitment to M's strategies, each grant must provide for the establishment of a new or the utilization of an existing R that is governed by the young people. Additionally, M and the grant recipient must enter into a grant agreement that expressly incorporates the provisions of the proposal and requires the recipient to use the grant as described.

The Community Board is intended by M to constitute the primary mechanism by which M carries out the Youth Engagement strategy and thereby seeks to accomplish its mission. The Community Board will involve the engagement of the young people in the communities and M will invest resources to build the capacity of communities to provide increased opportunities for those in foster care and those who have aged out of the system. Members of the Community Board will receive the technical assistance, training, support and resources necessary to function effectively.

M will not be involved in selecting the individuals participating in the Community Boards nor will it participate in any of the actual operations of the Community Boards. M acknowledges that each of participants of the Community Boards will vary from place to place and from time to time in size, nature of organization, system of governance and membership requirements. M's only requirement is that young people who are currently in foster care or those who have aged out of the system govern the local community board.

The second program is the National Board. Each local community board will designate one or more representatives to serve on the national board. The National Board will be composed of representatives from the community board and related national initiatives. The National Board will advise M on the overall direction and policy of Youth Engagement. Members will direct the investment of some resources and serve as informed advocates for improved policies. Additionally, the National Board will provide technical assistance to the local community boards, advocate for participation in the community boards, and related programs and activities, provide feedback and recommendations to M for actions and directions of M, and make decisions regarding the expenditure of funds available to the National Board. Activities of the National Board will include networking, on-going training and personal development for board members, and initiating projects in local communities.

In addition to participation in the community and national boards, individuals have an opportunity to participate in committees, focus groups or meetings under M to assist in the development of programs related to Youth Engagement.

M believes that in order for its Youth Engagement strategy to work best, the young persons who serve on the community board, national board or the committees, focus groups or meetings, should be reimbursed for any travel expenses incurred by them in connection with such service and given some payment as compensation for such service. These payments are referred by M as stipends. The stipends have three components: (1) the actual travel costs incurred for participation; (2) the actual cost of meals and lodging; and (3) a nominal amount of $25x to $ 50x per day of participation. "Participation" generally means actual participation in a particular meeting of the community board, national board or the committees, or focus groups.

M states that the stipends serve the purpose of providing a modest incentive for these young persons to participate as well as enhance the self-worth of those who participate, so that they will become more involved in foster care and its related issues.

In the case of grants made by M to tax-exempt entities that utilize the community boards, M generally intends only to accept grant proposals and to enter into grant agreements with grant recipients that intend to pay stipends to participating young persons. This intent will be communicated to potential grant recipients. However, M will not determine the amount of any stipends paid to the community board participants, the procedure for the payment of these stipends, or the amount of participation required, if any, to receive a stipend. M will not be involved in choosing the young persons who serve on the community boards nor select any individual who may receive a stipend.

In the case of the National Board and the committees, focus groups and meetings, stipends will be paid directly by M to participants. M will only reimburse for the actual travel costs incurred and approved in advance by M, meals and lodging for participation at an event, and provide nominal compensation in the amount of $25x to $50x per day for participation. The stipends will only be paid to the young people currently in foster care or who have aged out of the system, and not to any adults participating.

The following rulings are requested:

1. Any grant made by M to a public charity that is used by the public charity in part to pay stipends to the young people who are currently in the foster care system or who have aged out of the system and who participate in the national board will not be treated for purposes of section 4945 of the Code as grants made by M to the young people.

2. The stipends paid by M to the young people who are currently in the foster care system or who have aged out of the system and who participate the national board or on committees, focus groups, or meetings, for reimbursement of travel expenses, reimbursements or direct payment of meal and lodging expenses, and cash portions of the stipend, are not taxable expenditures under section 4945 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 similar purposes by such individual, unless such grant satisfies the requirements of section 4945(g).

Section 4945(g) of the Code provides in effect, that any grant to an individual for travel, study, or similar purposes is not a taxable expenditure if it is awarded on an objective and nondiscriminatory basis, pursuant to a procedure approved in advance by the Secretary and the grant: (1) constitutes a scholarship or fellowship grant not includible as gross income pursuant to section 117(a) and is used to study at an educational organization described in section 170(b)(1)(A)(ii), (2) constitutes a prize or award not includible as gross income pursuant to section 74(b)(1) and (2) and the recipient is selected from the general public, or (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 defines the term, "grants" as used in section 4945 of the Code. Grants do not ordinarily include payments such as salaries, consultants' fees, and reimbursement for travel expenses such as transportation, board, and lodging to persons (regardless of whether such persons are individuals) for personal services in assisting a foundation in planning, evaluating, or developing projects or areas of program activity by consulting, advising, or participating in conferences organized by the foundation.

Section 53-4945-4(a)(4)(i) of the regulations provides that 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) of the Code, 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.

Rev. Rul. 74-125, 1974-1 C.B. 327 describes a private foundation that assists educators in employing improved educational methods. In connection with this activity, the foundation utilizes the services of consultants. The services include the development of model curricula in a particular educational area and the design of materials to assist educators in the performance of their educational functions. The services provided by the consultants constitute personal services and assist the foundation in planning and developing its program activity. The revenue ruling holds that payment for such services do not constitute grants within the meaning of the applicable regulations and are therefore not taxable expenditures within the meaning of section 4945(d)(3) of the Code.

Rev. Rul. 77-212, 1977-1 C.B. 356 illustrates the requirement that the public charity controls the selection process. In this revenue ruling, a private foundation provides grants to a vocational school that are used to purchase tools for students. The students submit grant applications with lists of needed tools to the selection committee composed of representatives of the private foundation. The recipients are selected on ability and financial needs. The grants are made to the vocational school, which then purchases tools for the students. The Service concluded that the grants are deemed made to the individual students by the private foundation because the foundation retained the authority to select the grantee students.

Rev. Rul. 81-293, 1981-2 C.B. 218 holds that the payment of compensation to research

assistants by an individual grantee of a private foundation, where the grantee controls the selection of these persons independently of the grantor private foundation and where the private foundation's grant-making procedures satisfy the requirements of section 4945(g) of the Code, does not constitute a grant within the meaning of section 4945(d)(3).

The requested rulings are discussed below:

1.

M will provide grants to other tax-exempt public charities whose mission and activities are consistent with its mission. Similar to Rev. Rul. 81-293, *supra*, M is not involved in the selection of any individual grantee, nor is there any oral or written agreement by which M may cause the selection of the individual grantee by the grant recipient. M's grants to public charities that utilize a local community board are not earmarked for named persons who currently serve or may serve in the future on community board. Section 53-4945-4(a)(4)(i) of the regulations.

Unlike the organization in Rev. Rul. 77-212, M does not retain the authority to select the individual grantees. M is not involved in the selection of the young persons who participate nor does it play a role in the process by which these young persons are selected to serve. Instead, these people are chosen by the public charity itself. Therefore, the grants provided by M are deemed as grants to the public charities.

2.

The young persons who participate in the national board and the committees, focus groups or meetings, are providing services to M. Through the combined experiences and knowledge of the participants, M is developing programs, policies, legislation and advocacy to improve the conditions of foster care and help the young people make a successful transition from foster care. Reimbursement for travel, meals and lodging by M does not constitute grants for purposes of section 4945 of the Code. Such expenses are incurred for participation in M's program areas. Section 53-4945-4(a)(2) of the regulations.

Similarly, the stipends provided by M to the individual participants of the national board and the committees, focus groups, or meetings are payments provided to the individual participants as recognition for their service to M. As discussed in Rev. Rul. 74-125, *supra*, payment for services do not constitute grants.

Accordingly, based on the facts represented, we rule that:

1. Any grant made by M to other tax-exempt, public charities that is used by the public charity in part to pay stipends to young people who are currently in the foster care system or who have aged out of the system, who participate in the local community board is not treated as a grant made by M to the young people for purposes of section 4945 of the Code.

2. The stipends paid by M to young people who are currently in the foster care system

or who have aged out of the system, who participate in the national board or the committees, focus groups or meetings, are not taxable expenditures under section 4945.

Because this ruling letter could help resolve any questions, please keep it in M's permanent records.

This ruling is directed only to M. 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,

(signed) Terrell M. Berkovsky

Terrell M. Berkovsky
Manager, Exempt Organizations
Technical Group 2