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

200150029

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

AUG 8 2001

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Dear Applicant:

This is in reference to your letter postmarked June 20, 2000, requesting advance approval of your grant procedures under section 4945(g)(1) of the Internal Revenue Code.

You are recognized as exempt under section 501(c)(3) of the Code and are classified as a private foundation.

You are proposing to make a scholarship grants to M area high school students to attend college. You will be selecting your students based on academic performance; ability and aptitude for college; motivation, character, ability and potential; leadership and financial need. A grantee of your scholarships may not be related to a member of your selection committee or to a disqualified person. You will be obtaining yearly reports from your grantees. You will investigate and seek recovery of any misuse of your funds.

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

Section 1.501(c)(3)-1(d)(2) of the Income Tax Regulations provides that the term "charitable" is used in section 501(c)(3) in its generally accepted legal sense. "Charitable" as used in its generally accepted legal sense includes advancement of education.

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Section 4945(a) and (b) of the Code impose certain excise taxes on expenditure defined as taxable expenditures by section 4945(d).

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

Section 4945(g)(1) 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 is subject to the provisions of section 117(a) and is to be used for study at an educational organization described in section 170(b)(1)(A)(ii).

Section 53.4945-4(c)(1) of the Foundation and Similar Excise Taxes Regulations provides that to secure approval for a grant-making procedure private foundation must demonstrate to the satisfaction of the commissioner that:

(a) The grant procedures include an objective and nondiscriminatory selection process;

(b) The procedure is designed to result in the performance of the activities intended to be financed; and

(c) The foundation will obtain reports to determine whether the grant funds are being properly used. Reports are not required if the foundation pays the scholarship grants to an educational institution. See sections 53.4945-4(c)(5) and 53.4945-4(c)(7) of the Foundation Excise Tax Regulations.

Since you are aiding students to attend college, your scholarship program would be a charitable activity of advancing education. Thus, we conclude that your exempt status under section 501(c)(3) of the Code will not be affected by engaging in these activities.

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Based on the information submitted, and assuming your scholarship procedures will be conducted as proposed, we rule that your procedures for awarding scholarships comply with the requirements contained in section 4945(a)(1) of the Code because:

(a) Your scholarship procedures include an objective and nondiscriminatory selection process.

(b) Your recipients must be enrolled in a degree program to receive your scholarship grants. Thus, your procedures are designed to result in the performance of the activities that you intend to finance.

(c) You will satisfy the report requirement by requiring annual reports; investigating and seeking recovery of any misuse of your scholarship grants.

Grants awarded under your program are considered scholarships under section 117 of the Code, and qualify for the exclusion from gross income provided for in section 117(a) to the extent such amounts are used for "qualified tuition and related expenses" within the meaning of section 117(b).

Based on the information submitted, we conclude that your scholarship grant making program is a grant program that is not subject to the provisions of section 117(a) of the Code. Accordingly, we rule that your scholarship grants that are awarded under your procedures are excludable from the gross income of your recipients under section 117 of the Code.

This ruling is based on the understanding that there will be no **material** changes in the facts upon which it is based, and that no grants will be awarded to the foundation manager, trustee, **members** of the selection committed or for a purpose inconsistent with the purposes described in section 170(c)(2)(B) of the Code. Any change in your procedures must be reported to the Cincinnati, Ohio Tax Exempt and Government Entities (TE/GE) office.

We are informing the Cincinnati, Ohio Tax Exempt and Government Entities (TE/GE) office of this action. Please keep a

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copy of this ruling with your organization's permanent records.

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

Sincerely,

Terre11 M. Berkovsky
Manager, Exempt Organizations
Technical Group 2

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4976.01-00

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

Date: AUG 8 2001

Contact Person:
****

ID Number:
[redacted]

Telephone Number:
[redacted]

T:EO:B4

Employer Identification Number: **********

Legend:

The Trust =
The Association =
The Foundation =
A =
B =
Plan C =

Dear Sir or Madam:

This is in response to the Trusts letter dated September 12, 2000, as amended May 24, 2001, which requests a ruling that the termination of the Trust and the transfer of excess assets from the Trust to the Foundation will not result in the imposition of the 100% excise tax under section 4976 of the internal Revenue Code.

The Trust was established in 1989 to provide various health and welfare benefits to employees who are covered under a collective bargaining agreement between the Association and A, an affiliate of B. In 1990, the Trust received a determination letter from the Internal Revenue Service that it qualified as a tax-exempt Voluntary Employees' Beneficiary Association (VEBA) within the meaning of section 501 (c)(9) of the Code.

Section 10.2 of the Trust Agreement, as amended, provides that in the event of termination, and payment of benefits, any remaining funds shall be paid

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over into the Foundation. In 1997 the Foundation received a determination letter from the Internal Revenue Service that it was an exempt organization as described in Section 501(c)(3) of the Code. The purposes of the Foundation include providing assistance in housing to people or organizations with special shelter needs, and educational assistance to individuals and organizations to further the objective of bettering the community.

Participating employers contributed funds to the Trust for each employee covered by the agreement which purchased group medical benefits for these employees.

Due to recent changes in the collective bargaining agreements, participating employers make contributions to Plan C, which provides health coverage to the employees who were formerly covered by the Trust. No individuals are currently eligible for benefits under the Trust and none will be eligible in the foreseeable future. No participating employer contributions were made to the Trust effective June 1999.

The Association proposes to terminate the Trust and contribute the surplus assets to the Foundation. These assets represent contributions by participating employers that exceed the amounts required to purchase health benefits for each eligible employee of participating employers.

Section 501 (c)(9) of the Code provides that a voluntary employee benefit plan (VEBA) that provides for the payment of life, sick, accident, or other benefits to the members of such association or their dependents or designated beneficiaries shall be exempt from taxation.

Section 1.501 (c)(9)-1 of the Income Tax Regulations provides that to be described in section 501(c)(9) of the Code, an organization must be an employees' organization.

Section 1.501 (c)(9)-4(a) of the regulations provides that no part of the net earnings of any employees' association may inure to the benefit of any private shareholder or individual other than through the payment of benefits.

Section 1.501 (c)(9)-4(d) of the regulations states that the distribution of assets remaining in a terminated VEBA after satisfaction of all liabilities to plan beneficiaries will not constitute prohibited inurement where they are used to purchase life insurance or health benefits for the members or directly distributed to them so long as amounts are based on objective and reasonable standards and do not result in disproportionate payments to officers, shareholders, or highly compensated employees of an employer contributing to or otherwise funding the employees association.

Section 4976(a) of the Code provides that if an employer maintains a welfare benefit fund and there is a disqualified benefit provided during any taxable year, a tax is imposed on such employer equal to 100% of such disqualified benefit.

Section 4976(b)(l)(C) of the Code states that that for the purposes of Section 4976(a), any portion of a welfare benefit fund that reverts to the benefit of the employer is a disqualified benefit.

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

Section 1.501 (c)(3)-l(c)(2) of the regulations states in part, that an organization is not operated for one or more exempt purposes if its net earnings may inure in whole or in part to the benefit of private shareholders or individuals.

Section 1.501 (c)(3)-1 (d)(l)(ii) of the regulations provides in part 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 or her family, shareholders of the organization or persons controlled directly or indirectly by such private interests.

The transfer of excess assets from the Trust to the Foundation will ensure that none of its funds revert to the employers or any other private individual. Because no employers or any other private individuals will receive a distribution of funds from the Trust, the transfer of assets to the Foundation will not be a disqualified benefit as defined by section 4976(b)(l)(C) of the Code.

Accordingly, we rule that, based upon the information submitted, the termination of the Trust and the transfer of excess assets from the Trust to the Foundation will not result in the imposition of the 100% excise tax under section 4976 (a) of the Code.

This ruling is based on the understanding that there will be no material changes in the facts upon which it is based. Any changes that may have bearing on your tax status should be reported to the Service.

We are sending a copy of this ruling to the Ohio TE/GE office. Because this letter could help resolve any questions about your exempt status, you should keep it with your permanent records.

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If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely yours,

Gerald V. Sack

Gerald V. Sack
Manager, Exempt Organizations
Technical Group 4