



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

200419035

Date: FEB - 9 2004

Contact Person:

ID Number:

Contact Number:

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Employer Identification Number:

Dear Sir or Madam:

This is in reply to a letter dated May 29, 2003, from your authorized representative requesting advance approval of your grant making procedures pursuant to the provisions of section 4945 of the Internal Revenue Code.

You are exempt under from federal income tax under section 501(c)(3) of the Code and are a private foundation within the meaning of section 509(a).

You have requested advance approval under section 4945(g) of the Code of the procedures to be employed by you in making grants to encourage and recognize individuals who have made creative contributions in the arts, and in particular the area of the visual and related arts, through such activities as creating, teaching, researching or writing.

You have stated that grant award recipients will be selected by a selection committee with expertise in the arts on an objective and nondiscriminatory basis without any action on their part to receive the grant, as an application process will be not be used. The selection committee will select grant-award recipients on an annual basis so long as suitable candidates of quality can be identified. Grant-award recipients will be selected on an objective and nondiscriminatory basis. Grant recipients will not be required to render future services to you as a condition to receiving a grant, as the grants will be made in recognition of past achievements.

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 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(d)(5) of the code provides that the term "taxable expenditure" includes any amount paid or incurred by a private foundation for any purpose other than one specified in section 170(c)(2)(B), that is, other than for an exclusively religious, charitable, scientific, literary, or educational purpose, or to foster national or international amateur sports competition (not involving the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals.

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--

(1) 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),

(2) the grant constitutes a prize or award which is subject to the provisions of section 74(b)(without regard to paragraph (3) thereof), if the recipient of such prize or award 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)(3)(i) of the Foundation and Similar Excise Taxes Regulations provides that a grant to an individual for purposes other than those described in section 4945(d)(3) of the Code is not a taxable expenditure within the meaning of that section.

Revenue Ruling 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.

We have considered your grant-making procedures under section 4945(g) of the Code. Based on the information submitted, we have concluded that section 4945(g) advance approval of your grant making program is not required because your grants will be made in recognition of past achievement, without any obligation to use the proceeds for travel, study or other similar purposes and are therefore not grants described in section 4945(d)(3) of the Code. See Revenue Ruling 77-380, supra. Also see Revenue Ruling 75-393, 1975-2 C.B. 451.

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.

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.

Sincerely Yours,

(signed) Marvin Friedlander

Marvin Friedlander
Manager, Exempt Organizations
Technical Group 1