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

Date: NOV 14 2000

Contact Person:

Identification Number:

Telephone Number:

T:EO:B2

EIN:

LEGEND: M =

Dear Sir or Madam:

This is in reply to the letter submitted on your behalf concerning your proposal to implement a program through which you will make grants to certain organizations which receive a designated amount of volunteer services from employees and retired employees of M.

You are exempt under section 501(c)(3) of the Internal Revenue Code and are a private foundation within the meaning of section 509(a) of the Code.

M is a substantial contributor to you and thus is a "disqualified person" within the meaning of section 4946(a)(l)(A) of the Code.

You have proposed to establish a new program to make grants to organizations which have been recognized as exempt under section 50l(c)(3) of the Code and which are classified as public charities under section 509(a) and to governmental units described in section l70(c)(l). In order to be eligible to participate in this program the organization must receive a designated amount of volunteer services from M's employees and retirees. It is to be the responsibility of the volunteer or team of volunteers to select the organization they will work for and the amount of hours to be volunteered. The amount of the grant you will make is dependent upon the number of hours of volunteer service provided the grantee by M's employees and retirees. You and M will ensure that this new program is separate from other similar programs operated by M. M will not include references to this new program in product advertisements. However, M may refer to the program in annual reports, news releases or institutional advertising which do not also offer specific products for sale at specific prices.

You expect to contract with an independent for-profit entity to serve as the processor and fiscal agent for this program. This entity will receive the applications from the volunteers, inform the charitable organizations receiving this assistance that they are eligible for a grant from you and set forth the terms and conditions of the grant. These conditions will include requiring the recipient acknowledge that the stated amount of volunteer hours have been performed and that the grant monies can only be used exclusively for charitable purposes. That entity will confirm the status of any 50l(c)(3) grantee which has been selected as a grant recipient. An organization described in section l70(c)(l) will certify its own status. It is also expected that M's public relations and communications department will provide services and use of equipment to you to help administer the proposed program. The public relations and communications department will not charge you for any services they may provide.

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Grant monies may not be applied to discharge a legal obligation of a volunteer or anyone else and cannot result in any economic benefit to the volunteer. The grants will not be earmarked for particular projects or purposes of the donee. organization. Grants will be made for the general support of the donee organization with the condition that they not be used for lobbying, intervention in a political campaign or to carry on any voter registration drive.

You have requested rulings that conducting this new program:

1. will not jeopardize your status under section 501(c)(3) of the Code;

2. will not constitute an act of self-dealing under section 4941 of the Code; and

3. will not constitute a taxable expenditure under section 4945 of the Code.

Section 170(c)(l) of the Code in defining charitable contributions provides that charitable contributions include contributions or gifts made to or for the use of a state, a possession of the United States, or any political subdivision of any of the foregoing, or the United States or the District of Columbia, but only if the contribution or gift is made for exclusively public purposes.

Section 170(c)(2)(B) of the Code indicates that charitable purposes include, with certain restrictions, any exclusively religious, charitable, scientific, literary, or educational purpose, or fostering national or international amateur sports competition, or preventing cruelty to children or animals but only if no part of the net earnings of the organization carrying on such activities inures to the benefit of any private shareholder or individual.

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 509(a)(l), (2) and (3) describe the various types of organizations which are not private foundations.

Section 4941(a) imposes a tax on each act of self-dealing between a private foundation and a disqualified person (as defined in section 4946(a)).

Section 4941(d)(1)(E) of the Code provides that the term "self-dealing" includes any direct or indirect transfer to, or use by or for the benefit of, a disqualified person of the income or assets of a private foundation.

Section 53.4941(d)-l(a) of the Foundation and Similar Excise Tax Regulations provides that for purposes of section 4941, the term "self-dealing" means any direct or indirect transaction described in section 53.4941(d)-2. For purposes of this section it is immaterial whether the transaction results in a benefit or detriment to the private foundation.

Section 53.4941(d)-2(f)(2) of the regulations provides, in part, that the fact that a disqualified

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person receives an incidental or tenuous benefit from the use by a foundation of its income or assets will not, by itself, make such use an act of self-dealing.

Section 53.4941(d)-2(d)(3) of the regulations provides that the furnishing of goods, services, or facilities by a disqualified person to a private foundation shall not be an act of self-dealing if they are furnished without charge.

Section 53.4941(d)-2(f)(2) of the regulations provides that the fact that a disqualified person receives an incidental or tenuous benefit from the use by a foundation of its income or assets will not, by itself, make such use an act of self-dealing. Thus, the public recognition a person may receive, arising from the charitable activities of a private foundation to which such person is a substantial contributor does not in itself result in an act of self-dealing.

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

Section 4945(d) of the Code defines the term "taxable expenditure" as including grants to an organization unless the organization is described in paragraph (l), (2) or (3) of section 509(a) or is an exempt operating foundation. It also includes any amount paid or incurred by a private foundation for any purpose other than one specified in section 170(c)(2)(B).

Section 53.4945-5(a)(4) of the regulations provides that a grantee organization will be treated as a section 509(a)(l) organization if it is an organization described in section 170(c)(1) and the grant is made exclusively for charitable purposes as described in section 170(c)(2)(B).

Section 53.4945-6(b)(1) of the regulations indicates that reasonable expenditures for purposes of administrating a charitable program are not treated as taxable expenditures as long as such costs are reasonable.

Section 4946(a)(1) of the Code describes a disqualified person as including a substantial contributor to a foundation.

Section 7701 (a)(1) of the Code defines the term "person" as including an individual, a trust, estate, partnership, association, company or corporation.

The information you have submitted establishes that you were created by M. Therefore M is a substantial contributor to you. You have proposed to establish a new program through which you will make grants to organizations which have been recognized as exempt under section 50l(c)(3) of the Code and which are classified as public charities under section 509(a) and to governmental units described in section l70(c)(l). Grants will be limited to those eligible entities which have received a designated amount of volunteer services from M's employees and retirees. You have represented that you will take measures to ensure that the grantee organizations will qualify to participate in your program.
You have also represented that grants will be used for the general support of the donee and may not be used for lobbying , intervention in a political campaign or in a voter registration drive. Furthermore grants cannot be applied to discharge a legal obligation of a volunteer or anyone else or result in an economic benefit to the volunteer.

It is well established in the law of charity that an organization may qualify for exemption under section 501(c)(3) of the Code if it makes grants to other organizations described in section 501(c)(3) or to governmental entities described in section 170(c)(l) if made for exclusively public purposes. Accordingly, the establishment of this program will not jeopardize your current status under section 501(c)(3) of the

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Code. However, because you are a private foundation you are subject to the provisions of the Chapter 42 excise taxes, in particular the excise tax imposed upon acts of "self-dealing" by section 4941(a) and the excise tax imposed upon "taxable expenditures" by section 4945(a).

Generally, an act of self dealing may be present where the assets of a private foundation are transferred to or used by or for the benefit of a disqualified person. It is not pertinent whether the transaction is beneficial or detrimental to the private foundation.

Based upon the information submitted it appears that the sole benefit that M receives through this program is the recognition it receives by reason of its employees or retirees performing volunteer work for recognized charities or governmental entities. Section 4941 of the Code specifically recognizes that an act of self-dealing is not present where a private foundation only receives an incidental or tenuous benefit from an activity. Therefore, an act of self-dealing within the meaning of section 4941(d) of the Code has not occurred.

In addition, section 53.4941(d)-2(d)(3) of the regulations provides that the furnishing of goods, services, or facilities by a disqualified person to a private foundation shall not be an act of self-dealing if the goods, services, or facilities are furnished without charge. Therefore, whatever assistance you may receive from M or any of its various departments will not be considered an act of self-dealing.

A taxable expenditure may occur where a private foundation makes grants to other organizations. However, a taxable expenditure is generally not present where the grantee organization is described in paragraph (l), (2) or (3) of section 509(a) or is an exempt operating foundation. A taxable expenditure may also occur where a private foundation expends funds for any purpose other than one specified in section 170(c)(2)(B).

It is clear that the program you have proposed will limit grants to organizations described in paragraph (l), (2) or (3) of section 509(a) and that you have limited the purposes of your grants to those described in section l70(c)(2)(B). In addition, section 53.4945-5(a)(4) of the regulations provides that a grantee organization will be treated as a section 509(a)(l) organization if it is an organization described in section 170(c)(1) and the grant is made exclusively for charitable purposes as described in section 170(c)(2)(B). Accordingly, we have concluded that your grant making program will not be considered a taxable expenditure within the meaning of section 4945(d).

Furthermore, section 53.4945-6(b)(1) of the regulations indicates that reasonable expenditures for purposes of administrating a charitable program are not treated as taxable expenditures. Accordingly, based on your representations we have concluded that the expenditures you may incur either directly, through M or through the entity you may hire to administer this program will not be taxable expenditures.

Therefore, based on the information you have submitted, we rule that conducting this new program:

1. will not jeopardize your status under section 50l(c)(3) of the Code;
2. will not constitute an act of self-dealing under section 4941 of the Code; and
3. will not constitute a taxable expenditure under section 4945 of the Code.

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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 by others as precedent. Because this letter could help resolve any question about your exempt status, you should keep it 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. For other matters, including questions concerning reporting requirements, please contact the Ohio TE/GE Customer Service Office.

Sincerely Yours,

Joseph Chasin

Joseph Chasin
Acting Manager,
Exempt organizations
Technical Group 2

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