



STATE OF MINNESOTA

OFFICE OF THE ATTORNEY GENERAL

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ATTORNEY GENERAL

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March 12, 1999

Rosalie Greeman, Associate Vice Chancellor
Minnesota State Colleges and Universities
500 World Trade Center
30 East Seventh Street
St. Paul, Minnesota 55101

Dear Ms. Greeman:

You have asked for an explanation of the tax exempt status of Minnesota State Colleges and Universities (MnSCU) and the thirty-six colleges and universities which comprise the state system. MnSCU is a state entity, established under law by the Minnesota Legislature. See Minnesota Statutes sections 136F.01 through 136F.10 (1998), attached. The state universities, community colleges and technical colleges all are part of MnSCU. Minnesota Statutes section 136F.10.

Because MnSCU is a state entity, it (along with its colleges and universities) is a tax-exempt organization. See 26 USC section 115. Pursuant to the Internal Revenue Code, gifts to this type of institution qualify as charitable contributions under 26 USC section 170(b)(1)(A)(ii) ("an educational organization which normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance"), as well as section 170(b)(1)(A)(v) ("[A] governmental unit referred to in subsection (c)(1).") Subsection (c)(1) includes "A State... or any political subdivision of any of the foregoing, but only if the contribution or gift is made for exclusively public purposes.").

Attached is a copy of a letter from the Internal Revenue Service explaining the effect of gifts to governmental entities, which may be helpful in reviewing questions raised about MnSCU's tax-exempt status.

Very truly yours,

Handwritten signature of Gail M. Olson in cursive.

GAIL M. OLSON
General Counsel

Minnesota State Colleges and Universities
(651) 296-6216

Att.

Internal Revenue Service
District Director

Department of the Treasury

P. O. Box 2508
Cincinnati, OH 45201

Date: FEB 16 1999

Person to Contact:
Gordon Schnur 31-02345
Customer Service Specialist

Minnesota State Colleges and
Universities
30 E. 7th St.
St. Paul, MN 55101-4914

Telephone Number:
877-829-5500
Fax Number:
513-684-5936
Federal Identification Number:
41-1687554

Dear Sir or Madam:

This responds to your request for information concerning your organization's federal tax status.

Information you have provided indicates that your organization may be a governmental instrumentality or a political subdivision of a state.

No provision of the Internal Revenue Code imposes a tax on the income of governmental units (such as states and their political subdivisions). Therefore, it has been the position of the Service that income of governmental units is not generally subject to federal income taxation. If, however, an entity is not itself a governmental unit (or an "integral part" thereof), its income will be subject to tax unless an exclusion or exemption applies.

One exclusion is provided by section 115(1) of the Code, which excludes from gross income:

- (A) income derived from the exercise of any essential governmental function, and
- (B) income accruing to a state or political subdivision.

Your organization's income may not be subject to tax, either because the organization is a governmental unit (or an "integral part" thereof), or because the income is excluded under section 115. In addition, your organization may also be eligible to receive charitable contributions which are deductible for federal income, estate, and gift tax purposes. Also, your organization is probably exempt from many federal excise taxes.

Your organization may obtain a letter ruling on its status under section 115, following the procedures specified in Rev. Proc. 95-1, 1995-1 I.R.B. 1 or its successor (the first Revenue Procedure published each year). Your organization must also pay a user fee as described in Rev. Proc. 95-1.

Your organization may also qualify for exemption from federal income tax as an organization described in section 501(c)(3) of the Code. If the organization is an entity separate from the state, county, or municipal government, and if it does not have powers or purposes inconsistent with exemption (such as the power to tax or to exercise enforcement of regulatory powers), your organization would qualify under section 501(c)(3). To apply for exemption, complete Form 1023 and pay the required user fee.

Sometimes governmental units are asked to provide proof of their status as part of a grant application. If your organization is applying for a grant from a private foundation, the foundation may be requesting certain information from your organization because of the restrictions imposed by the Code on such foundations. One such restriction imposes a tax on private foundations that make any "taxable expenditures." Under section 4945(d) and (h) of the Code, "taxable expenditures" include (1) any grant to an organization (unless excepted), unless the foundation exercises "expenditure

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Minnesota State Colleges and Universities
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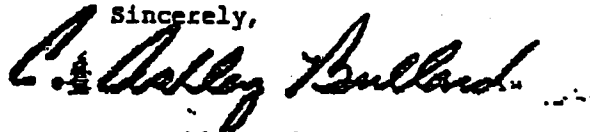
responsibility" with respect to the grant; and (2) any expenditure for non-charitable purposes. Under section 4942 of the Code, private foundations must also distribute certain amounts for charitable purposes each year--"qualifying distributions"--or incur a tax on the undistributed amount. "Qualifying distributions" include certain amounts paid to accomplish charitable purposes.

Private foundation grants to governmental units for public or charitable purposes are not taxable expenditures under these provisions, regardless of whether the foundation exercises "expenditure responsibility." Under section 53.4945-5(a)(4)(ii) of the Foundation and Similar Excise Tax Regulations, expenditure responsibility is not required for grants for charitable purposes to governmental units (as defined in section 170(c)(1) of the code). Similarly, grants to governmental units for public purposes are "qualifying distributions", under section 53.4942(a)-3(a) of the regulations; and, if they are for charitable purposes, will not be taxable expenditures, under section 53.4945-6(a) of the regulations. Most grants to governmental units will qualify as being for charitable (as well as public) purposes.

Because of these restrictions, some private foundations require grant applicants to submit a letter from the Service determining them to be exempt under section 501(c)(3) and classified as a non-private foundation. Such a letter, or an underlying requirement that a grantee be a public charity, is not legally required to be relieved from the restrictions described above, when the prospective grantee is a governmental unit and the grant is for qualifying (public or charitable) purposes.

We believe this general information will be of assistance to your organization. This letter, however, is not a ruling and may not be relied on as such. If you have any questions, please contact the person whose name and telephone number are listed in the heading of this letter.

Sincerely,



C. Ashley Bullard
District Director

CHAPTER 136F

MINNESOTA STATE COLLEGES AND UNIVERSITIES

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DEFINITIONS

136F.01 DEFINITIONS.

Subdivision 1. Scope. For the purpose of this chapter, the following terms have the meanings given them.

Subd. 2. Board or board of trustees. "Board" or "board of trustees" means the board of trustees of the Minnesota state colleges and universities.

Subd. 3. Chancellor. "Chancellor" means the chancellor of the Minnesota state colleges and universities.

Subd. 4. State colleges and universities. "State colleges and universities" means Minnesota state colleges and universities governed by the board of trustees.

Subd. 5. Student activities. "Student activities" means lectures, concerts, and other functions contributing to the mental, moral, and cultural development of the student body

and community in which they live, athletic activities, including intercollegiate contests, forensics, dramatics, and such other activities of any nature as in the opinion of the board contribute to the educational, cultural, or physical well being of the student body.

History: 1995 c 212 art 4 s 3

BOARD OF TRUSTEES

136F.02 BOARD OF TRUSTEES OF THE MINNESOTA STATE COLLEGES AND UNIVERSITIES.

Subdivision 1. Membership. The board consists of 15 members appointed by the governor with the advice and consent of the senate. At least one member of the board must be a resident of each congressional district. Three members must be students who are enrolled at least half time in a degree, diploma, or certificate program or have graduated from an institution governed by the board within one year of the date of appointment. The student members shall include: one member from a community college, one member from a state university, and one member from a technical college. The remaining members must be appointed to represent the state at large.

Subd. 2. Term; compensation; removal; vacancies. The compensation, removal of members, and filling of vacancies on the board are as provided in section 15.0575. Members are appointed for a term of six years, except that the term of each of the student members is two years. Terms end on June 30.

Subd. 3. Board administration. The board shall elect a chair and other officers as it may desire. It shall determine its meeting dates and places.

History: 1991 c 356 art 9 s 2; 1994 c 532 art 7 s 2,3; 1995 c 212 art 4 s 5,64

136F.03 BOARD OF TRUSTEES OF THE MINNESOTA STATE COLLEGES AND UNIVERSITIES CANDIDATE ADVISORY COUNCIL.

Subdivision 1. Purpose. A candidate advisory council for the board of trustees of the Minnesota state colleges and universities shall assist the governor in determining criteria for, and identifying and recruiting qualified candidates for, nonstudent membership on the board.

Subd. 2. Membership. The advisory council consists of 24 members. Twelve members are appointed by the subcommittee on committees of the committee on rules and administration of the senate. Twelve members are appointed by the speaker of the house of representatives. No more than one-third of the members appointed by each appointing authority may be current or former legislators. No more than two-thirds of the members appointed by each appointing authority may belong to the same political party; however, political activity or affiliation is not required for the appointment of a member. Geographical representation must be taken into consideration when making appointments. Section 15.0575 governs the advisory council, except that the members must be appointed to six-year terms.

Subd. 3. Duties. The advisory council shall:

(1) develop a statement of the selection criteria to be applied and a description of the responsibilities and duties of a member of the board and shall distribute this to potential candidates; and

(2) for each position on the board, identify and recruit qualified candidates for the board, based on the background and experience of the candidates, and their potential for discharging the responsibilities of a member of the board.

Subd. 4. Recommendations. The advisory council shall recommend at least two and not more than four candidates for each seat. By April 15 of each even-numbered year, the advisory council shall submit its recommendations to the governor. The governor is not bound by these recommendations.

Subd. 5. Support services. The legislative coordinating commission shall provide administrative and support services for the advisory council.

History: 1991 c 356 art 9 s 3; 1994 c 532 art 7 s 4; 1995 c 212 art 4 s 6-8,64

136F.04 STUDENT BOARD MEMBER SELECTION.

Subdivision 1. **Responsibility.** Notwithstanding section 136F.03, the statewide community college student association, state university student association, and technical college student association shall each have the responsibility for recruiting, screening, and recommending qualified candidates for its student member of the board.

Subd. 2. **Criteria.** After consulting with the board of trustees candidate advisory council, the student associations shall jointly develop a statement of the selection criteria to be applied to potential candidates.

Subd. 3. **Recruiting and screening.** Each student association shall develop processes for identifying and recruiting qualified candidates and for screening those candidates.

Subd. 4. **Recommendations.** Each student association shall recommend at least two and not more than four candidates for its student member. By January 2 of the year in which its members' term expires, each student association shall submit its recommendations to the governor. The governor is not bound by these recommendations.

History: 1994 c 532 art 7 s 5; 1995 c 212 art 4 s 9,64

136F.05 MISSIONS.

The mission of the board is to provide programs of study that meet the needs of students for occupational, general, baccalaureate, and graduate education. The state universities, community colleges, and technical colleges shall have distinct missions as provided in section 135A.052, subdivision 1. Within that statutory definition and subject to the approval of the board, each community college, state university, and technical college may develop its own distinct campus mission. The board shall develop administrative arrangements that make possible the efficient use of the facilities and staff of the technical colleges, community colleges, and state universities for providing these several different programs of study, so that students may have the benefit of improved and broader course offerings, ease of transfer among schools and programs, integrated course credit, coordinated degree programs, and coordinated financial aid. In carrying out the merger of the three separate systems, the board shall control administrative costs by eliminating duplicative administrative positions and course offerings.

History: 1991 c 356 art 9 s 4; 1Sp1993 c 2 art 9 s 3; 1994 c 532 art 7 s 6; 1995 c 212 art 4 s 63

136F.06 POWERS AND DUTIES.

Subdivision 1. **General authority.** The board shall possess all powers necessary to govern the state colleges and universities and all related property. Those powers shall include, but are not limited to, those enumerated in this section. The board shall prescribe conditions of admission, set tuition and fees, approve programs of study and requirements for completion of programs, approve the awarding of appropriate certificates, diplomas, and degrees, enter into contracts and other agreements, and adopt suitable policies for the institutions it governs. To the extent practicable in protecting statewide interests, the board shall provide autonomy to the campuses while holding them accountable for their decisions. Sections 14.01 to 14.47 do not apply to policies and procedures of the board.

Subd. 2. **Governance authority.** The board shall have the authority needed to operate and govern the state colleges and universities unless otherwise directed or prohibited by law. The board is responsible for its operations and necessary decisions unless these are specifically delegated by law to a state department or agency.

Subd. 3. **Office location.** Notwithstanding chapter 16B, the board may select the location for its central office.

History: 1991 c 356 art 9 s 5; 1Sp1993 c 2 art 9 s 4; 1994 c 572 s 2; 1995 c 212 art 4 s 10-12,64; 1996 c 398 s 33,34

136F.07 CHANCELLOR.

The board shall appoint a chancellor who shall serve in the unclassified service. The chancellor shall possess powers and perform duties as delegated by the board. The board shall set the salary of the chancellor according to section 15A.0815.

History: 1995 c 212 art 4 s 13; 2Sp1997 c 3 s 18

DESIGNATION:**136F.10 DESIGNATION.**

The following are designated as the Minnesota state colleges and universities: the community colleges located at Austin, Bloomington, Brainerd, Brooklyn Park, Cloquet, Coon Rapids, Ely, Fergus Falls, Grand Rapids, Hibbing, International Falls, Inver Grove Heights, Minneapolis, Rochester, Thief River Falls, Virginia, White Bear Lake, Willmar, and Worthington; the community college centers located at Cambridge and Duluth; the state universities located at Bemidji, Mankato, Marshall, Moorhead, St. Cloud, Winona, and the Twin Cities metropolitan area; and the technical colleges located at Alexandria, Albert Lea, Anoka, Austin, Bemidji, Brainerd, Brooklyn Park, Canby, Detroit Lakes, Duluth, East Grand Forks, Eden Prairie, Eveleth, Faribault, Granite Falls, Hibbing, Hutchinson, Jackson, Minneapolis, Mahtomedi, Moorhead, North Mankato, Pine City, Pipestone, Red Wing, Rochester, Rosemount, St. Cloud, St. Paul, Staples, Thief River Falls, Wadena, Willmar, and Winona.

History: 1995 c 212 art 4 s 14

136F.11 CHANGES IN DESIGNATION AND STATUS OF EDUCATIONAL INSTITUTIONS.

Educational institutions heretofore known and described as state normal schools and state teachers colleges as designated in Minnesota Statutes have been redesignated as state universities. All property of the Duluth State College has been transferred and all obligations of the college have been assumed by the regents of the University of Minnesota in accordance with Minnesota Statutes 1974, section 137.13, and this college is now part of the university. The Southwest State University has been established in accordance with the provisions of Minnesota Statutes 1976, section 136.016.

History: 1957 c 576 s 1; 1965 c 331 s 2; 1975 c 321 s 2; 1982 c 424 s 35; 1995 c 512 art 4 s 64

136F.12 FOND DU LAC CAMPUS.

The Fond du Lac campus has a unique mission among two-year colleges to serve the lower division general education needs in Carlton and south St. Louis counties, and the education needs of American Indians throughout the state and especially in northern Minnesota. Accordingly, while the college is governed by the board of trustees, its governance is accomplished in conjunction with the board of directors of Fond du Lac tribal college.

History: 1995 c 212 art 4 s 15; 1996 c 398 s 35

136F.13 METROPOLITAN STATE UNIVERSITY.

Subdivision 1. The state university board shall operate an educational program for a state university center as organized in the seven county metropolitan area. The center may operate in facilities acquired through the commissioner of administration by gift or lease. The faculty and staff of the state university system shall provide assistance in developing curricular and educational programs for the university.

Subd. 2. Metropolitan state university may deposit tuition receipts received during the final quarter of each year in a suspense account. The balance in that account shall not cancel on June 30 but shall be available in the next fiscal year.

History: 1976 c 163 s 9; 1995 c 212 art 4 s 64

