

Mochary Foundation, Inc.
EIN 41-2254108

The Mochary Foundation, Inc.
26 Park St, 2nd Floor
Montclair, NJ 07042

Employer Identification Number: 41-2254108
Response Due Date: February 24, 2009

February 9, 2009

Internal Revenue Service
Exempt Organizations
PO Box 2508
Cincinnati, Ohio 45201
Attn: Grant Herring
Room 4122
Group 7825
Fax 513-263-4513

Dear Mr. Herring:

Thank you for your letter dated January 16, 2009 to The Mochary Foundation, Inc., regarding its application for exemption. Included herein are the responses to your questions in that letter.

“Private Operating Foundation: *You have submitted an opinion of counsel which partly meets the specifications of Regs 53.4942(b)-3 (b)(2). It appears, however, that you had already completed your first taxable year when you submitted Form 1023 on October 27. Regs 53.4942(b)-3(b)(1) appears to be applicable in your case: “New organizations—(1) In general. Except as provided in subparagraph (2) of this paragraph, an organization organized after December 31, 1969, will be treated as an operating foundation only if it has satisfied the test set forth in Sec. 53.4942(b)-1 and 53.4942(b)-2 for its first taxable year of existence. If an organization satisfies such tests for its 1st taxable year, it will be treated as an operating foundation from the beginning of such taxable year.”*

1. *Please submit sufficient information to show that you met the income test and the endowment test for the taxable year ending August 31, 2008.*
2. *Please include a complete list of your payments and disbursements during that period. State the amount of each disbursement, its purpose, and whether it is made directly for the active conduct of activities constituting its charitable, educational or other similar exempt purpose.*
3. *Please explain how you intend to meet the income and one of the alternative tests in the future.*
 - a. *To what extent will you rely on the set-asides to help you meet the tests?*
 - b. *Will you treat grants to individuals as directly for the active conduct of your exempt activities? If so, please show how you will maintain some significant involvement in the active programs in support of which*

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*such grants, scholarships, or other payments were made or awarded,
as described in Regs 53.4942(b)-1(b)(2)(i) and (ii) ”*

Our response to the above question is:

1. Attached to this letter, please find a copy of the 2008 990PF that the Foundation filed, showing that the Foundation has met both the income test and the endowment test for the taxable year ending August 31, 2008. In particular, page 10 of the 990PF shows that the Foundation has met both the income and the endowment tests.
2. Attached to this letter, please find a detailed income statement for the year ending August 31, 2008, showing all payments and disbursements during that period, with the exact amounts, purpose and whether they were made for the active conduct of exempt activities. The payments the Foundation currently makes for the FIYA program are all the payments needed for a participant to survive (food), be able to show up for and obtain work (travel, basic work clothes, pocket calendar, wallet to hold business cards, etc), to resolve pre-existing obstacles that prevent a participant from getting licenses or bank accounts that will further enable him to get jobs or have a safe place to keep his/her money (prior traffic tickets, prior bank charges, prior legal issues, etc), and training to get job skills and certifications (electrical trainers, driving school, security guard license training, etc). The payments that the Foundation makes for the CTY program are primarily to the Center for Talented Youth to help identify the 10 CTY Mochary Foundation participants, and then send those 10 participants to the 3-week CTY summer intensive academic program. The Foundation also buys food and pays for the travel costs of CTY participants to attend trainings and mentoring sessions at the Foundation offices. And finally, in its Film program, the Foundation currently pays for the exhibition costs of documentary films with an important social message. The Foundation also plans to produce such films in the future, but to date has not done so.
3. The Foundation plans on meeting the income and the endowment tests in the future through its direct disbursements for exempt purposes that will be similar in scope to those made in the taxable year 2008.
 - a. The Foundation does not plan to rely on set-asides to help meet either of these tests, unless the endowment grows significantly in size. Given the current asset level in the Foundation, we will likely be meeting both the income and the endowment tests through yearly direct expenditures, however we have also made a request for a set-aside because in future years there is a real possibility that we will receive significant contributions, and at that time may only be able to satisfy these two tests through the set-aside. Contributions, however, are unpredictable, especially given the current economic conditions.
 - b. The Foundation does plan to treat grants for economic hardship and basic practical education to FIYA members, as well as identification and tuition payments for CTY participants, as directly for the active

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conduct of the Foundation's exempt activities. The FIYA participants come to the Foundation's office regularly (every day until they get a job, and after that, on average 1 to 8 times per month) to receive direct training and counseling. At the Foundation, FIYA participants must show completion certificates or licenses attained for any training that the Foundation has paid for as a requirement of the participant's ongoing participation in the Foundation's program. In addition, the Foundation stays in direct contact with the directors of the training programs (on a weekly basis) that it pays for, insuring that each FIYA member has indeed participated successfully and respectfully in the training program and completed all of its requirements. The Foundation has contracted with the Center for Talented Youth (CTY), headquartered on the Johns Hopkins University campus, to select the 10 academically brightest 14-17 year olds in the poorest neighborhoods in New York City. CTY proposes 10 participants to the Foundation. The Foundation then either accepts the recommendations, or asks CTY to find further candidates. In 2008, once 10 acceptable participants were selected, they all came to the Foundation for orientation, and began to take a bi-weekly class (that lasted 4 hours on a Tuesday evening, taught by Mr. Mochary) on a practical life skill. The subject for 2008 was "How to Make Money". The Foundation plans to keep this same structure for 2009 and beyond. The subject of the 2008 class was highly popular, and highly relevant, and will likely remain the subject for 2009 and 2010. After the class, the Foundation then paid for each of the participants to attend CTY's intensive 3-week summer academic program. The Foundation has stayed in direct close contact with the administrators of the CTY summer academic training program (on a monthly basis) to insure that CTY members have indeed completed their training programs satisfactorily. Once the participants completed the summer course, they then continued to return to the Foundation for academic and career mentoring (currently, this averages once per 6 months) from Mr. Mochary. The Foundation plans to maintain this same approach in 2009 and beyond. It is our hope that we will be able to provide all participants with lifetime access to academic and career mentoring at the Foundation, as needed.

"Business employing FIYA participants: While the provision of housing to, and the establishment of a business employing, your FIYA participants lie several years in the future, it is clear that you have sufficiently definite plans to conduct these activities that you are providing for the construction of a facility in which to conduct them through the set-asides you have requested. Concerning the housing you have furnished fairly detailed information. The nature of the business which you will establish to employ ex-offenders needs to be described in much more detail. Unless you can establish that the business is an activity which is in the furtherance of your exempt purposes, like the halfway house, described in Rev. Rul. 75-472, the business will constitute an unrelated

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business activity, the income of which is taxable under IRC 511, and if very substantial, could bar exemption.

1. *Describe the planned business in detail, including the nature of the business, whether you will carry it on yourself or it will be conducted by another related or unrelated entity, and whether it will be carried on for profit.*
2. *What percentage of those employed will be current participants in your programs, what percentage former participants, what percentage hired from the outside?*
3. *Describe under what conditions you would provide employment to a participant or ex-participant in your programs.*
4. *Would these positions be permanent, or would you actively seek to place participants or ex-participants in outside jobs? Would the term of employment be limited in any other way?*
5. *When the business is fully operational,*
 - a. *What percentage of the facility space would be used by the business?*
 - b. *What percentage of your annual gross revenues will the gross receipts from the business activity represent, excluding gifts, grants and contributions? Including gifts, grants and contributions?*
 - c. *What percentage of all of your operating assets will be used for the business?*
6. *If it is your position that the business activity is not unrelated to the accomplishment of your exempt purposes, please provide a detailed explanation how the business activity is related to the accomplishment of your exempt purposes, citing all pertinent precedents."*

One of our exempt purposes is to teach ex-offenders the habits needed to get and keep a job. We can teach our participants the habits needed to get a job very quickly. In fact, on average, we are able to teach our participants in 3 days the habits needed to get a low-skill or no-skill minimum-wage job (dress well, speak well, and show up early). The habits needed to keep a job, however, are harder to teach. For these, we need to be there as they work, especially in the first weeks and months. We can then directly train our participants in how to relate to supervisors, co-workers and (potentially) clients with respect and dignity. We are actively searching for a business partner who will both hire our participants and allow us to continue to supervise and train our participants as they work. To date, we have not found such a partner. If we are unable to find such a partner, we plan to, one day, operate our own low-skill or no-skill business to train our participants in how to keep a job.

1. The business that seems best suited to training our participants in the habits needed to keep a job is street and building cleaning. No meaningful skill is required, so we can have participants begin working/training immediately. In addition, the work is very physical in nature, so any other work that a participant will get after this work will seem either doable or physically easy by comparison. (Our participants who have gotten jobs with outside construction firms have had a very hard time in the first few weeks adjusting

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to the sheer physicality of the labor, since they have never done physical labor in their lives before.) We plan on getting contracts with the municipality and private landlords. The Foundation will carry this business on itself, but there is no intention for it to become a profit center. The revenues that it will bring in will likely only cover the cost of paying the workers-in-training minimum wage, and a minimal amount for administrative overhead.

2. We plan to hire one non-program participant: the initial job crew supervisor. Other than him/her, we hope that all workers will be FIYA participants or ex-participants, including additional future job crew supervisors. All FIYA participants hired into the business will likely be paid minimum wage. Crew supervisors will likely be paid somewhat higher.
3. Employment in this business would likely become a requirement of participation in the FIYA program. Hopefully the term of this employment would only be 3-12 months, while the FIYA member learned skilled labor job skills in our evening training program, and was then able to secure a skilled labor job (at a higher pay level) with an outside business. Our goal is quality, not quantity, so we would hope to be able to continue to offer employment to ex-FIYA members if they had legitimate reasons for not being able to secure a higher-paying job or a similar-paying job with an outside firm.
4. Employment in the cleaning business would not be permanent, and we would actively train all participants in skilled job skills in the evenings, and then try to place them with outside skilled jobs. The Doe Fund (a 501(c)(3) public charity operating in New York City since 1987) runs a similar no-skill street-cleaning business, and limits employment to 12 months. It would be our goal that no one would need to work in our business longer than 12 months, and we believe that the carrot of a higher-paying skilled labor job would be enough to motivate all participants to get an outside job within 12 months. But, if not, we may impose a formal 12 month limitation on employment.
5. When the business is fully operational,
 - a. We believe that it will not require much space, as the service provided will take place outside of our own building. We believe that we would only need minimal administrative space, amounting to likely 10-20% of the total facility, or 50-100% of one 5,000 square foot floor.
 - b. The business will hopefully start small, working only with as many FIYA participants as our residential facility can house. In a 50,000 square foot facility, we can likely use 50% for residential purposes, and house 50 people (500 gross square feet per person). At an average annual minimum-wage salary of \$14,300 for a gross payroll of \$715,000/year, we would likely have to generate \$900,000 in revenues to cover normal and modest administrative costs (liability insurance, disability insurance, unemployment insurance, workers comp insurance, payroll taxes, bookkeeping and accounting, legal, etc). Our current investment income is less than \$20,000. This of course will grow by the time we purchase our facility, but I expect that the business' revenues will represent more than 50% of the Foundation's annual gross revenue, excluding gifts, grants and contributions. Although it is impossible to predict, at the time that we

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purchase a facility, we project that the foundation will receive on average \$1 million annually in gifts, grants and contributions. If that is the case, then we expect that the business revenues will represent somewhat less than 50% of our annual gross revenues.

- c. The business itself will require very limited operating capital as it requires only minimal equipment and supplies (uniforms, cleaning equipment, etc.). In addition, we will not need significant working capital for payroll, as we will only hire workers once paying contracts are secured. Therefore, we expect that less than 5% of the Foundation's operating assets will be used for the business.

6. It is our position that the business activity is not unrelated to the accomplishment of our exempt purposes, because the fundamental goal of our exempt purpose is to train ex-offenders in the habits needed to get and keep a well-paying job. The most basic of these habits are the ability to consistently work a long, hard day and remain respectful to supervisors, co-workers and clients. These habits can only be learned on-the-job. Therefore, not only is this business operation not unrelated to our exempt purpose, it is actually fundamental to our exempt purpose.

"Use of contractors in general: You are conducting a number of programs which would seem to call for an extensive investment of time. You have indicated that Mr. Mochary will devote a substantial number of volunteer hours not only to a supervisory role, but to working on a one-on-one basis with your clients. There may be other volunteers as well. Still, this picture of who will be conducting the work of the organization and for what reward seems somewhat implausible, at least for the mature organization. You have also indicated that you intend to make use of contractors in preference to employees.

1. *When your programs are fully deployed, how many participants will there be in each program? Please provide a timeline projecting the increase in participation over time.*
2. *At each stage, project the number of persons providing services to the participants in each program. Indicate how many are volunteers, how many employees and how many independent contractors or their employees.*
3. *If you use contractors, will any disqualified person with respect to you have a business interest in any contractor? If yes, identify each contractor, the nature of its services, and the disqualified person in question.*

We realize that having no administrative employees may seem unrealistic. We offer that there are very special circumstances here. Mr. Mochary has both extensive experience (having successfully started and run several for-profit businesses, as well as having taught numerous courses teaching adjudicated youth) and lots of time. Mr. Mochary has effectively retired from the for-profit world, and his full-time activity is now volunteering at the Foundation. The Foundation is in fact modeled on another charitable organization called Delancey Street (a 501(c)(3) public charity operating in San Francisco, CA since 1971). Delancey Street was started 38 years ago by an ex-prison psychologist, Mimi Silbert. Delancey Street is effectively a commune, where ex-offenders are invited to live

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and work. Today, Delancey Street houses over 1000 ex-offenders, there are no non-ex-offender members or employees other than Mimi herself, and she herself lives at the facility and is an unpaid volunteer.

1. When the programs are fully deployed, our hope is that we will have about 10 new FIYA participants per year, and 10 new CTY participants per year. In 2008, we had 10 new CTY participants and 5 new FIYA participants. We plan on increasing the number of new FIYA participants to 10 in 2009, and holding steady at that number going forward. While this may seem like a lot of additional participants, please remember that our work with FIYA participants consists of basic job skills training (which we accomplish in about 3 days), ongoing skilled job training (which is usually completed in about 2 months of 2 evening/weekend classes per week), and ongoing life-coaching (which we accomplish in a one-hour meeting with each participant every 1 to 3 months, depending on the needs of that participant). Mr. Mochary provides the basic job skills training as well as the life-coaching, and a combination of Mr. Mochary and outside contractors provide the skilled job training. In addition, our work with CTY participants is much less time-intensive and consists only of bi-weekly classes and individual life-coaching sessions (addressing each participants particular academic and life path). It is very realistic therefore for Mr. Mochary, along with several contractors, to train and support a community of 10 new FIYA participants and 10 new CTY participants per year, as this is effectively already occurring. New FIYA participants are not accepted until all existing FIYA participants are "stabilized" (have a stable job, and safe housing) and therefore require much less ongoing support. Similarly, new CTY participants are not accepted until all existing CTY participants have completed their summer intensive academic program and are moving forward with their academic careers, and thus require much less time at the Foundation.
2. People providing services to participants are currently Mr. Mochary, two contractors who teach electrical skills (Tom Cooper and Karl Midgley, who are unrelated in any way to Mr. Mochary or any other officer or director of the Foundation; both Mr. Cooper and Mr. Midgley were found through a job-posting on Craigslist.org after Mr. Mochary reviewed applications from 50 respondents, and interviewed 5 of these candidates in person), two outside commercial driving schools, and the CTY summer academic program. Of these, only Mr. Mochary is a volunteer. The electrical teachers are paid contractors, and tuition is paid to the driving schools and CTY.
3. No disqualified person has, or will have, a business interest in any contractor or outside firm that the Foundation uses.

"Documentaries: You have indicated among Mr. Mochary's business interest, there is a media company which has produced documentary films.

1. ***Please list the companies in which disqualified persons with respect to your organization have a substantial interest and which produce or are***

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capable of making the documentary films you intend to produce. Identify the disqualified person and the nature of the interest.

2. *Will you contract with any of these entities to make documentary films for you?*
 - a. *If so, provide a copy of the agreements between you and the media companies, if these have been entered into, or describe in detail the terms upon which you will contract with these related entities.*
 - b. *Explain how you will ensure that the terms of any agreement with these related parties is fair to you."*

1. Mr. Mochary owns a 99% interest in Mochary Group LLC, which owns a 100% interest in Mochary Films LLC.
2. The Mochary Foundation does not intend to contract with Mochary Group LLC or Mochary Films LLC to make documentary films, but rather the Foundation will make such documentaries itself, and if need be hire unrelated outside persons or firms to complete whatever portion of the documentary film the Foundation's volunteers (i.e.- Mr. Mochary) are unable to complete themselves. In the event that Mochary Group LLC or Mochary Films LLC ends up having films or services that are useful to Mochary Foundation, then Mochary Group LLC or Mochary Films LLC will donate such films or services to Mochary Foundation, Inc and in no case will charge Mochary Foundation for such films or services.

"Advance approval of Grants under 4945(g): You requested advance approval for three types of grants to individuals: Scholarships, as described in 4945(g)(1); grants, as described in 4945 (g)(3); and prizes for the recipient's "sole, unfettered, and unconditional use and enjoyment," and "awarded for participation and achievement in a program, at which the recipient's accomplishment was judged sa being the most exemplary of the goals of the program." You have not requested that the Secretary approve your procedures in awarding these prizes with a specific reference to 4945 (g)(2); and indeed the prizes do not appear to be prizes falling within the ambit of 4945 (g)(2), since they are not grants within the meaning of 4945 (d)(3), for "travel, study, or other similar purposes." Advance approval is not required to make such grants. Consequently we will only consider your requests under 4945 (g)(1) and (3).

1. *With regard to the procedures for the awarding of "grants' described in 4945 (g)(3), it is not quite clear what sort of grants you are proposing to make. They seem to relate a "training or program" to achieve a specific academic or trade skill; and/or "remedial and core vocational training"; and/or a "Project" of some sort; but it is not a scholarship grant described in 4945 (g)(1). Please describe each type of "Grant" you plan to award in detail.*
2. *What is the point of "making other individuals and organizations aware of the availability of the Prizes, Scholarships and Grants" if to be eligible, a candidate must be an existing participant in one of your programs?"*

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Our response:

1. The Foundation currently pays for tuition to skilled job training and licensing programs (security guard license, passenger and commercial driver's license, electrician training, etc.) for FIYA members who have shown significant achievement in the Foundation's basic classes and thus merit further education. The Foundation also pays for the tuition to Center for Talented Youth's summer academic program for all 10 of our CTY program participants. While the Foundation believes that these tuition payments are direct program-related expenses for our exempt purpose, we wanted to play it safe and get advance approval for these disbursements in case the IRS deemed them to be grants or scholarships.
2. You are correct. Current programs, prizes and awards are limited to existing participants. However, in the future, we hope to give prizes to community workers doing exemplary work in the community, who are not Foundation participants. It is this type of prize that we would make community workers and other organizations aware of. We apologize for not making this more clear in our original application.

"User Fee: If you paid the user fee of \$750 twice by mistake, we will need proof of both payments in the form of clear photocopies of the checks, front and back; once we have established that we have received a double payment, we will refund one of them to you."

Thank you. We have checked our records and can find no evidence of a second user fee payment.

Under penalties of perjury, I declare that I have examined this information, including accompanying documents, and, to the best of my knowledge and belief, the information contains all the relevant facts relating to the request for the information, and such facts are true, correct, and complete.

I hope that this letter has fully answered your questions. But if not, please do not hesitate to request more information, or contact me at 917-355-2829 and/or matt@mochary.com.

Thank you for your thorough reading of our application, and your excellent questions above.

Yours sincerely,



Matt Mochary
President
The Mochary Foundation, Inc.