

Internal Revenue Service
P.O. Box 2508
Cincinnati, OH 45201

Department of the Treasury

Number: **201729026**
Release Date: 7/21/2017

Employer Identification Number:

Contact person - ID number:

Contact telephone number:

Date: April 25, 2017

LEGEND:

B= company
C= company
D= scholarship name
P= test
Q= test
X= scholarship program

UIL:

4945.04-04

Dear _____ :

You asked for advance approval of your employer-related scholarship grant procedures under Internal Revenue Code section 4945(g). This approval is required because you are a private foundation that is exempt from federal income tax. You requested approval of your scholarship program to fund the education of certain qualifying students.

Our determination

We approved your procedures for awarding employer-related scholarships. Based on the information you submitted, and assuming you will conduct your program as proposed, we determined that your procedures for awarding employer-related scholarships meet the requirements of Code section 4945(g)(1). As a result, expenditures you make under these procedures won't be taxable.

Also, awards made under these procedures are scholarship or fellowship grants and are not taxable to the recipients if they use them for qualified tuition and related expenses (subject to the limitations provided in Code section 117(b)).

Description of your request

Your letter indicates you will sponsor scholarships for high school children of active, retired and deceased employees of B, known as the D. You will enter into an agreement with C, a publicly supported organization, who will administer your program and make one-time scholarships to students competing in their X.

Scholarships are available to high school students that are either a United States citizen or lawful permanent resident (or have applied for permanent resident, the application for

which has not been denied) and intend to become a U.S. citizen at the earliest opportunity allowed by law, and have met all participation requirements established by C. C selects scholarship recipients through competition. Students enter the competition by taking a test called P. Those students scoring within the top one-half of one percent on a state-by-state basis are designated as Semifinalists. They may advance to the Finalist level by confirming their scores on a second test called Q and by submitting an application form that includes: a high school record (provide by their high school officials) showing strong academic performance, a personal essay, extra-curricular accomplishments and the recommendation of their high school principal or school official designated by the principal. C selects students from among those children of B who reached the Finalist level of this competition.

Recipients must enter college in the fall term following selection and enroll as a full-time undergraduate in a college or university in the United States that holds accredited status with a regional accrediting commission on higher education (except for service academies, virtual universities, and certain institutions that are limited in their purpose or training). Recipients must attend college during the day, enroll in a course of study leading to a baccalaureate degree, and remain in good academic and disciplinary standing.

You will disburse funds to C for each one-time scholarship for which you are providing support pursuant to the terms in your agreement. C administers all aspects of the program and bears all administrative costs. An independent committee appointed by C selects recipients. C confirms the individual scholarship recipient's enrollment at a college or university in the United States that holds accredited status with a regional commission on higher education; makes payment of the award through the financial aid office of the institution; and supervises and investigates the use of the scholarships by the recipients in their educational program.

Scholarships are not used as a means of inducement to recruit employees. A student's eligibility is determined at the time the scholarship award is offered and will not be terminated if the student's parent or relative subsequently terminates employment. Eligibility may not be conditioned on any other employment-related factors, such as the parent's position, service or duties. The prior employment period for establishing eligibility may not exceed three years. Individuals must use their scholarships only to pay educational costs at an institution that meets the requirements of section 170(b)(1)(A)(ii) of the Code.

Basis for our determination

The law imposes certain excise taxes on the taxable expenditures of private foundations (Code section 4945). A taxable expenditure is any amount a private foundation pays as a grant to an individual for travel, study, or other similar purposes. However, a grant that meets all of the following requirements of Code section 4945(g) is not a taxable expenditure.

- The foundation awards the grant on an objective and nondiscriminatory basis.
- The IRS approves in advance the procedure for awarding the grant.
- The grant is a scholarship or fellowship subject to Code section 117(a).
- The grant is to be used for study at an educational organization described in Code section 170(b)(1)(A)(ii).

Revenue Procedure 76-47, 1976-2 C.B. 670, provides guidelines to determine whether grants a private foundation makes under an employer-related program to employees or children of employees are scholarship or fellowship grants subject to the provisions of Code section 117(a). If the program satisfies the seven conditions in sections 4.01 through 4.07 of Revenue Procedure 76-47 and meets the applicable percentage tests described in section 4.08 of Revenue Procedure 76-47, we will assume the grants are subject to the provisions of Code section 117(a).

You represented that your procedures for awarding grants under this program will meet the requirements of Revenue Procedure 76-47. In particular:

- An independent selection committee whose members are separate from you, your creator, and the employer will select individual grant recipients.
- You will not use grants to recruit employees nor will you end a grant if the employee leaves the employer.
- You will not limit the recipient to a course of study that would particularly benefit you or the employer.

Section 4.08 of Rev. Proc. 76-47 provides a percentage test guideline. It states that in the case of a program that awards grants to children of employees of a particular employer, the program meets the percentage test if the number of grants awarded under that program in any year to such children does not exceed 25 percent of the number of employees' children who (i) were eligible, (ii) were applicants for such grants, and (iii) were considered by the selection committee in selecting the recipients of grants in that year, or 10 percent of the number of employees' children who can be shown to be eligible for grants (whether or not they submitted an application) in that year.

As stated in section 4 of Rev. Proc. 76-47, if a sponsor's program satisfies the seven conditions set forth in sections 4.01 through 4.07, but does not meet the percentage test of section 4.08 applicable to grants to employees' children, the question whether the grants are scholarship or fellowship grants subject to the provisions of section 117(a) of the Code will be resolved on the basis of all the facts and circumstances.

In making this determination the Service will consider as a substitute for the percentage test of section 4.08 all the relevant facts and circumstances to determine whether the primary purpose of the program is to provide extra compensation or other employment incentive, or whether the primary purpose is to educate recipients in their individual capacities. These facts and circumstances will be considered in the context of the probability that a grant will be available to any eligible applicant.

Such relevant facts and circumstances could include the following: the history of the program (such as the source of the program's funding), the courses of study for which the grants are available, any eligibility requirements imposed by the program (other than employment of the applicants or their parents and the age and grade level prerequisites for the studies for which the grants are available), the publicity given the grant program, the degree of independence of the selection committee, the particular standards used for selection, the specific means used to determine whether those standards have been met, the precise nature of the employee limitation or preference, the number of grants available, the number of employees or their children who would be eligible for them, the percentage of eligible employees or their children applying for grants who normally (e.g., on an average basis) receive grants under the program, and whether and how many grants are awarded to individuals who do not qualify as employees or children of employees.

Under the facts and circumstances as stated above, there is only an insignificant probability that any particular employee's child and/or other relative will be selected and, thus, the grant's primary purpose is not one of providing extra compensation or other employment incentive, and the facts and circumstances test of Rev. Proc. 76-47, section 4, is met.

Accordingly, based upon the information presented, and assuming your scholarship program will be conducted as proposed, with a view to providing objectivity and non-discrimination in the awarding of scholarship grants, we rule that your grants comply with the requirements of section 4945(g)(1) of the Code. Thus, such expenditures made in accordance with those procedures will not constitute "taxable expenditures" within the meaning of section 4945(d)(3) of the Code.

Other conditions that apply to this determination:

- This determination only covers the grant program described above. This approval will apply to succeeding grant programs only if their standards and procedures don't differ significantly from those described in your original request.
- This determination is in effect as long as your procedures comply with sections 4.01 through 4.07 of Revenue Procedure 76-47 and with either of the percentage tests of section 4.08 or the facts and circumstances stated above. If you establish another program covering the same individuals, that program must also meet the percentage test.
- This determination applies only to you. It may not be cited as a precedent.
- You cannot rely on the conclusions in this letter if the facts you provided have changed substantially. You must report any significant changes to your program to the Cincinnati Office of Exempt Organizations at:

Internal Revenue Service
Exempt Organizations Determinations
P.O. Box 2508
Cincinnati, OH 45201

- You cannot award grants to your creators, officers, directors, trustees, foundation managers, or members of selection committees or their relatives.
- All funds distributed to individuals must be made on a charitable basis and further the purposes of your organization. You cannot award grants for a purpose that is inconsistent with Code section 170(c)(2)(B).
- You should keep adequate records and case histories so that you can substantiate your grant distributions with the IRS if necessary.

We've sent a copy of this letter to your representative as indicated in your power of attorney.

Please keep a copy of this letter in your records.

If you have questions, please contact the person listed at the top of this letter.

Sincerely,

Stephen A. Martin
Director, Exempt Organizations
Rulings and Agreements