

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

Department of the Treasury

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Employer Identification Number:

Contact person - ID number:

Contact telephone number:

LEGEND

UIL: 4945.04-04

B = Corporation
C = Foundation
D = Scholarship Program
E = Corporation
F = Corporation
G = Country
H = Number
j dollars = Amount

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 student.

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 from foundation 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 that you will operate an employer-related scholarship program called D. You already had an approved scholarship program in place, and now you are modifying it.

The purpose of D is to provide scholarship grants to a limited number of children of the employees of B. The annual scholarship is j dollars per year and is renewable for up to a maximum of three additional years, based upon evidence of satisfactory academic progress.

The grants are for authorized college expenses which are defined as tuition, academic fees, books, and room and board. The grants will be paid directly to the educational organization in the United States or G. Any college or university must be the type of educational organization described in Section 170(b)(1)(A)(ii) of the Code.

The scholarship program's administrator currently is C. You may, from time to time, select a new scholarship administrator to replace C. Any new scholarship program administrator will be an organization exempt from federal income tax under Section 501(c)(3) of the Code and independent of you and B.

Information about D is available on B's website, from C, and from guidance counselors at many high schools in the United States and G within the communities in which B's facilities are located. Additionally, employees will be informed of the availability of the scholarship grants through an employee newsletter.

In order to be eligible to be selected for a scholarship, a candidate must be the son or daughter of an eligible employee (including a stepchild, an adoptive child or a child who does not reside with an eligible employee but is a dependent of an eligible employee for federal income tax purposes.) Except as discussed below an eligible employee is any person employed by B (or a wholly-owned subsidiary) in the United States or G on a full-time basis with a least one year of continuous service; provided, however, the death of an eligible employee during the year(s) of the candidate's eligibility to apply for a scholarship will not render the candidate ineligible.

For purposes of an initial scholarship award, eligible employees do not include those employees of B with the title of Vice President or above. Eligible employees also do not include those who serve as your trustees or officers.

A candidate must be in his or her final year of high school, graduate in the current academic year, and enter an accredited United States state or non-profit college or university or educational organization in G not later than the next academic year. Exceptions to the requirement that a scholarship recipient enter an accredited college or university in United States or G not later than the next academic year may be granted, at the sole discretion of the scholarship program's administrator, currently C, for extreme circumstances, such as a significant health or family emergency. Such exceptions shall be granted for up to one year and only with the written approval of the C. The exception is available whether or not the scholarship recipient's parent remains employed with B. C may not consider the position of the student's parent with B in determining whether to grant the exception.

Students entering a United States Military Academy, participating in an R.O.T.C. Scholarship Program, or receiving a full scholarship from another source in the United States or G are not eligible to compete for this scholarship.

Certain college freshmen attending an accredited state or private non-profit college or university in the United States or G may have been ineligible during their final year of high school solely due to the inability of the parent to satisfy the length of service criteria to qualify as an eligible employee. Should the parent meet the length of service criteria during the candidate's freshman year, the candidate may apply for the scholarship for the next academic year, whether or not the candidate applied for a scholarship in the prior year. In such a case, all other selection criteria and eligibility requirements must be met. In the event such a candidate is selected for a scholarship, such scholarship will be renewable for a maximum of three additional school years, based on satisfactory academic progress as determined by C.

The scholarship contains no restriction regarding any candidate's or recipient's race, position, other than the exclusion of certain executives from the definition of eligible employees, services or duties of a candidate's or a recipient's parent. In addition, the scholarship will not be used to recruit new employees or as an inducement to present employees to continue their employment or otherwise follow a course of action sought by B.

A scholarship grant will not be terminated because the recipient's parent terminates employment with B subsequent to the awarding of the scholarship, regardless of the reason for such termination. Further, if a scholarship is awarded for one academic year, no recipient will be ineligible for a scholarship in any subsequent year (limited by the general restriction on the total number of awards a student may receive) because that individual's parent is no longer employed with B. Once an individual has received a scholarship grant, no other employment criteria will be imposed upon such person's parent in order for the renewal of that recipient's scholarship grant. Finally, at the time the scholarship is awarded, there will be no requirement, condition or suggestion, express or implied, that the recipient or the recipient's parent is expected to render future employment services to B or you or be available for such future employment.

The scholarship grants are available for any course of study at an accredited college or university in United States and G and are in no way limited to those that would be of particular benefit to B or you. There is no commitment, understanding, or obligation suggesting that the course of studies be undertaken to benefit you or B.

Eligibility for renewal is determined by C, based solely on satisfactory academic progress of the recipient as a full-time student and submission of an annual student statement. Likewise, a recipient who was first awarded a scholarship as a college freshman, qualifies for renewal for a maximum of three years, provided he or she is otherwise eligible. Scholarships may be renewed even if the recipient has successfully completed the requirements for a bachelor's degree in less than four years, provided he or she has enrolled in a full-time second or advanced-degree program at an eligible university or college within 12 calendar months of successful completion of the undergraduate degree.

The selection of grant recipients will be made by a committee chosen by C and will be composed of individuals who are totally independent of B and you. No committee

member will be a current or former employee of either E, F, B or you. C will choose committee members based on their background and/or knowledge in the field of education. No spouse, child or grandchild (or stepchildren or step-grandchildren) of your committee member, trustee or an officer may be considered for a scholarship grant. C is an independent non-profit corporation exempt from federal income tax under Section 501(c)(3) of the Code.

In its sole discretion, C may waive, in writing, the requirement that a recipient be enrolled on a full-time basis and permit the recipient to be enrolled on a part-time basis at an eligible university or college. This one-time waiver is only available to a recipient in his or her final semester of study who is expected to graduate at the end of that semester. The waiver is available whether or not the recipient's parent remains employed with B. C may not consider the position of the recipient's parent with B in determining whether to grant the waiver.

You estimate that the potential number of applicants is substantial as B employs approximately H individuals in the United States and G who will qualify as eligible employees. The number of scholarship grants awarded in any year (not including renewals of scholarship grants awarded in previous years) will not exceed 25 percent of the number of eligible employee's children who: (i) were eligible; (ii) were applicants for a scholarship; and (iii) were considered by the selection committee in selecting recipients of grants in that year.

The committee will screen candidates based on test scores (the SAT and ACT), class rank, recommendations from school personnel, as well as conclusions drawn by the committee from personal interviews as to a candidate's motivation and character. No consideration will be given to the employment of candidate's parents or to B's line of business, nor will B or you provide any instruction to C as to how scholarship recipients should be selected.

Grants will be awarded solely in the order recommended by the selection committee and cannot be increased from the number recommended by the selection committee. Further, only the committee may vary the amounts of the grants awarded. The announcement of the awards will be made by C and B. You may also verify the eligibility of each candidate.

The general supervision of the scholarship grants will be undertaken by C. Scholarship grants will be paid to the educational organization with the understanding that the funds will be used to defray tuition, academic fees, books, and room and board only so long as such recipient is enrolled in the school and his or her standing is consistent with the purposes and conditions of the grant.

You will comply with the Office of Foreign Assets Control ("OFAC") procedures by verifying that any foreign recipient of any scholarship grant, the employee-parent, and foreign educational institution to be attended are not on OFAC's list of Specially Designated Nationals and Blocked Persons.

You represent that you will (1) arrange to receive and review grantee reports annually and upon completion of the purpose for which the grant was awarded, (2) investigate diversions of funds from their intended purposes, and (3) take all reasonable and appropriate steps to recover diverted funds, ensure other grant funds held by a grantee are used for their intended purposes, and withhold further payments to grantees until you

obtain grantees' assurances that future diversions will not occur and that grantees will take extraordinary precautions to prevent future diversions from occurring.

You represent that you will maintain all records related to the following: (1) individual grants including information to evaluate grantees, (2) grantees which are identified as a disqualified person, (3) how the amount and purpose of each grant was established, and (4) how you established supervision and investigation of the grants.

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 grant program will meet the requirements of either the 25 percent or 10 percent percentage test in Revenue Procedure 76-47. These tests require that:

- The number of grants awarded to employees' children in any year won't exceed 25 percent of the number of employees' children who were eligible for grants, were applicants for grants, and were considered by the selection committee for grants, or
- The number of grants awarded to employees' children in any year won't exceed 10 percent of the number of employees' children who were eligible for grants (whether or not they submitted an application), or
- The number of grants awarded to employees in any year won't exceed 10 percent of the number of employees who were eligible for grants, were applicants for grants, and were considered by the selection committee for grants.

You further represented that you will include only children who meet the eligibility standards described in Revenue Procedure 85-51, 1985-2 C.B. 717, when applying the 10 percent test applicable to employees' children.

In determining how many employee children are eligible for a scholarship under the 10 percent test, a private foundation may include only those children who submit a written statement or who meet the foundation's eligibility requirements. They must also satisfy certain enrollment conditions.

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 u or the employer.

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. 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