

Rev. Proc. 80-39, 1980-2 C.B. 772 [Modified by 2010-4]

Section 1. Purpose

.01 The purpose of this revenue procedure is to provide guidelines for determining whether educational loans made by a private foundation under an employer-related loan program are taxable expenditures under section 4945 of the Internal Revenue Code.

.02 Ruling requests seeking advance approval of loan procedures are to be submitted to the Assistant Commissioner (Employee Plans and Exempt Organizations), Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, Attention: E:EO:T, and must include the statements required by section 53.4945-4(d) of the Foundation Excise Tax Regulations.

Sec. 2. Background

.01 Rev. Rul. 77-434, 1977-2 C.B. 420, holds that educational loans made by a private foundation on an objective and nondiscriminatory basis, pursuant to a procedure approved in advance by the Secretary or the Secretary's delegate, are individual grants within the meaning of section 4945(g)(3) of the Code. Thus, the loans are not taxable expenditures.

.02 Section 53.4945-4(b) of the regulations provides that a private foundation's grants are made on an objective and nondiscriminatory basis if the foundation's loan program is consistent with its exempt status under section 501(c)(3) of the Code and the allowance of deductions under section 170 for contributions to the foundation.

.03 Educational loans made by a private foundation to employees of a particular company or to their children are made for a purpose inconsistent with the foundation's exempt status under section 501(c)(3) of the Code and the allowance for deductions under section 170 for contributions to the foundation if the loans serve the private interests of the employer, rather than serving charitable purposes. A long-term, low-interest educational loan provided by a private foundation is of substantial value to students who could not obtain them from any source other than the employer-related program. The Service will assume that employer-related educational loans are made on an objective and nondiscriminatory basis, within the meaning of section 4945(g), and thus are not taxable expenditures, if they meet the guidelines contained in Sec. 4 of this revenue procedure.

SEC. 3. Application of Guidelines

.01 The guidelines in Sec. 4 apply only to educational loans made on or after January 1, 1970, by a private foundation under an employer-related program to individuals who are employees, or the children of employees, of the employer to which the program relates. Rev. Proc. 76-47, 1976-2 C.B. 670, provides guidelines for determining whether a grant made by a private foundation under an employer-related

grant program to an employee or to a child of an employee of the particular employer to which the program relates is a scholarship or fellowship grant under section 117 of the Code.

.02 An employer-related program is a program that treats some or all of the employees, or the children of some or all of the employees, of a particular employer as a group from which the recipients of some or all of the foundation's loans will be selected; limits the potential loan recipients for some or all of the foundation's loans to individuals who are employees, or the children of employees, of the particular employer; or otherwise gives such individuals a preference or priority over others in being selected as loan recipients.

.03 The guidelines assume that the other applicable requirements of section 53.4945-4 of the regulations concerning loans to individuals are met.

.04 These guidelines do not determine whether loans to disqualified persons are taxable expenditures under section 4945 of the Code or would subject the disqualified persons to the tax on acts of self-dealing under section 4941.

Sec. 4. Guidelines

.01 General rule.

If a private foundation's educational loan program satisfies the seven conditions set forth in Secs. 4.03 through 4.09 below, and meets the percentage test described in Sec. 4.10, the Service will assume such loans are not taxable expenditures.

.02 Facts and circumstances test.

1 If a private foundation's loan program satisfies the seven conditions set forth in Secs. 4.03 through 4.09, but does not meet the percentage test of Sec. 4.10, the Service will consider, as a substitute for the percentage test of Sec. 4.10, all the relevant facts and circumstances to determine whether the primary purpose of the program is to further the private interests of the employer, or whether the primary purpose is to educate recipients in their individual capacities. The availability of loans under the program to employees of their children must be controlled and limited by substantial nonemployment-related factors so that the preferential treatment derived from employment is not of any significance beyond initial qualification for the loan. Such qualification must not lead to any significant probability that employment will make loans available for a qualified employee or his or her children interested in applying for one.

2 Such relevant facts and circumstances include, but are not limited to: the history of the program (such as the source of the program's funding), the courses of study for which the loans 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 loans are available), the publicity given the loan

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 loans available, the number of employees or their children who would be eligible for the loans, the percentage of eligible employees or their children applying for loans who normally (e.g., on an average basis) receive loans under the program, and whether and how many loans are awarded to individuals who do not qualify as employees or the children of employees.

.03 Inducement.

The program must not be used by the employer, the private foundation, or the creator of the foundation, to recruit employees or to induce employees to continue their employment or otherwise follow a course of action sought by the employer.

.04 Selection committee.

1 Selection of loan recipients must be made by a committee consisting wholly of individuals totally independent (except for participation on this committee) and separate from the private foundation, the foundation's creator, and the relevant employer. An individual who is a former employee of either the foundation or the employer concerned will not be considered totally independent. Such committees preferably should consist of individuals knowledgeable in the educational field so that they have the background and knowledge to evaluate properly the potential of the applicants.

2 The forwarding of the selections by the independent selection committee to the employer or the private foundation for the sole purpose of verifying the eligibility requirements and selection criteria used by the committee in considering the candidates and in making its selection will not disqualify the program. Any public announcement of the awards, however, must be made by the selection committee or by the foundation.

3 Loans must be awarded in the order recommended by the selection committee. The number of loans to be awarded may be reduced but may not be increased from the number recommended by the selection committee. Only the committee may vary the amounts of the loans awarded.

.05 Eligibility requirements.

1 The program must impose identifiable minimum requirements for loan eligibility. Such requirements must be related to the purpose of the program and must limit the independent selection committee's consideration to those employees, or children of employees, who meet the minimum standards for admission to an educational institution (as defined in section 170(b)(1)(A)(ii) of the Code) for which the loans are available. No persons will be considered eligible if they are not reasonably expected to attend such an institution, even if they meet the minimum standards.

2 If an employee must have been employed for some minimum period by the employer to which the program relates to be eligible to receive a loan, or to make that employee's children eligible to receive a loan, the minimum period of employment may not exceed three years. Moreover, eligibility must not be related to any other employer-related factors, such as the employee's position, or duties.

.06 Objective basis of selection.

Selection of loan recipients must be based solely upon substantial objective standards that are completely unrelated to the employment of the recipients or their parents and to the employer's line of business. Acceptable standards include, but are not limited to: prior academic performance, performance on tests designed to measure ability and aptitude for higher education, recommendations from instructors or other individuals not related to the potential loan recipients, financial need, and conclusions drawn from personal interviews as to motivation and character.

.07 Employment.

1 A loan may not be terminated solely because the recipient or the recipient's parent subsequently terminates employment with the employer, regardless of the reason for the termination of employment.

2 If a loan is awarded for one academic year and the recipient must reapply for an additional loan or loans to continue studies in a subsequent year, the recipient may not be considered ineligible for a subsequent loan simply because that individual or the individual's parent is no longer employed by the relevant employer. The standards for additional loans must be based solely upon nonemployment-related factors such as need and maintenance of scholastic standards.

3 At the time the loan or additional loans are awarded, there must be no requirement, condition or suggestion, express or implied, that the recipient or the recipient's parent is expected to render future employment services for the foundation or the relevant employer, or be available for such future employment, even though such future employment is at the discretion of the foundation or the employer.

.08 Course of study.

The courses of study for which loans are available must not be limited to those that would be of particular benefit to the relevant employer or to the foundation. If the courses of study for which loans are available include one or more that would be of such particular benefit, a loan may not be conditioned on the recipient's choosing such a course of study; the recipient must have a free choice to use the loan in the pursuit of a course of study for which the loan is otherwise available that is not of particular benefit to the employer or to the foundation.

.09 Other objectives.

The terms of the loan and the courses of study for which loans are available must be consistent with a disinterested purpose of enabling the recipients to obtain an education in their individual capacities solely for their personal benefit and they must not include any commitments, understandings or obligations, conditional or unconditional, suggesting that the studies are undertaken by the recipients for the benefit of the relevant employer or the foundation, or have as their objective the accomplishment of any purpose of the employer or the foundation (even though consistent with its exempt status) other than enabling the recipients to obtain an education in their individual capacities and solely for their personal benefit.

.10 Percentage test.

1 In the case of a program that awards loans to children of employees of a particular employer, the program meets this percentage test if the number of children receiving loans under that program in any given year 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 loans in that year, or 10 percent of the number of employees' children who can be shown to be eligible for loans (whether or not they submitted an application) in that year.

2 In the case of a program that awards loans to employees of a particular employer, the program meets this percentage test if the number of employees receiving loans under that program in any year does not exceed 10 percent of the number of employees 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.

3 For the purpose of applying these percentage tests, an employee or child of an employee will be considered eligible only if the individual meets all of the eligibility requirements imposed by the program and such requirements satisfy the conditions of Sec. 4.05 of this revenue procedure. Renewals of loans awarded in prior years will not be considered in determining the number of loans awarded in the current year. Loans awarded to children of employees and those awarded to employees will be considered as having been awarded under separate programs for purposes of all of the applicable requirements of this revenue procedure whether or not the loans are awarded under separately administered programs.

4 If a private foundation's employer-related program encompasses educational loans and scholarship or fellowship grants to the same group of eligible employees or employees' children, the percentage tests in Sec. 4.10 of this revenue procedure apply to the total number of individuals receiving combined grants of scholarships, fellowships, and educational loans.

Sec. 5. Reliance on Pre-September 29, 1981, Ruling Letters

.01 A private foundation that holds a ruling letter issued before September 29,

1980, approving its employer-related educational loan program under section 4945(g)(3) of the Code, may continue to rely on the ruling letter provided its loan program fully complies with Secs. 4.01-4.10 continuously from the date on which the ruling letter was issued. Upon written request, the Service will issue a current ruling letter affirming the qualification of the loan program under the relevant portions of this revenue procedure.

.02 Pursuant to the authority contained in section 7805(b) of the Code, where a private foundation holds a ruling letter issued before September 29, 1980, approving its employer-related educational loan program, and where its loan program does not fully comply with Secs. 4.01-4.10, the private foundation may rely on the ruling letter through March 31, 1981.

.03 Educational loan programs modified to conform with Secs. 4.01-4.10 should be submitted for advance approval under section 4945(g)(3) of the Code in accordance with section 53.4945-4 of the regulations.