

Rev. Proc. 85-51, 1985-2 C.B. 717

SECTION 1. PURPOSE

The purpose of this revenue procedure is to clarify Rev. Proc. 76-47, 1976-2 C.B. 670, and Rev. Proc. 80-39, 1980-2 C.B. 772, with regard to determining the number of employees' children who can be shown to be eligible recipients of employer-related educational grants or loans for purposes of the 10 percent test.

SECTION 2. BACKGROUND

01 Rev. Proc. 76-47 provides guidelines to be used in determining whether a grant made by a private foundation under an employer-related educational grant program to a child of an employee of the particular employer to which the program relates is a scholarship or fellowship grant subject to the provisions of section 117(a) of the Code.

02 Section 4 of Rev. Proc. 76-47 provides that if a private foundation's employer-related grant program satisfies seven conditions, and either a percentage test or a facts and circumstances test, the Service will assume that grants awarded under the program will be scholarship or fellowship grants subject to the provisions of section 117 of the Code. Section 4.08 of Rev. Proc. 76-47 provides that a program that awards grants to children of employees of a particular employer meets the percentage test if the number of grants awarded in any year to such children does not exceed 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. An employee's child will be considered eligible only if that child meets all eligibility requirements imposed by the program and the requirements satisfy the conditions of section 4.03 of Rev. Proc. 76-47. Section 4.03 of Rev. Proc. 76-47 provides that, in the case of scholarships, the program must impose minimum eligibility requirements that limit the independent selection committee's consideration to those children of employees who meet the minimum standards for admission to an educational institution (as defined in section 151(e)(4) of the Code) for which the grants are available. No persons will be considered eligible if they would not reasonable be expected to attend such an institution, however, even if they meet the minimum standards.

03 Rev. Proc. 80-39 provides 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 Code.

04 Section 4 of Rev. Proc. 80-39 provides that if a private foundations's employer-related loan program satisfies seven conditions, and either a percentage test or a facts and circumstances test, the Service will assume that loans awarded under the program will not be taxable expenditures under section 4945 of the Code. Section 4.10 of Rev. Proc. 80-39 provides that a program that awards loans to children of employees of a particular employer meets the percentage test if the number of loans awarded in any year to such children does not exceed 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. An employee's child will be considered eligible only if that child meets all eligibility requirements imposed by the program and the requirements satisfy the conditions of section 4.05 of Rev. Proc. 80-39. Section 4.05 of Rev. Proc. 80-39 provides that the program must impose minimum eligibility requirements that limit the independent selection committee's consideration to those children of employees who meet the minimum standards for admission to an educational institution (as defined in section 151(c)94) of the Code) for which the loans are available. No persons will be considered eligible if they would not reasonably be expected to attend such an institution, however, even if they meet the minimum standards.

SECTION 3. APPLICATION

The alternate 10 percent test under section 4.08 of Rev. Proc. 76-47 and section 4.10 of Rev. Proc. 80-39 is a safe harbor provision under which a private foundation may award educational grants or loans to 10 percent of the number of employees' children who can be shown to be eligible for a grant or loan in any year whether or not they applied for one. Therefore, application of the 10 percent text depends on whether the private foundation can determine how many employees' children are considered eligible, because the number of applications it received is not determinative. The eligibility requirements described in sections 4.03 and 4.05 of Rev. Proc. 76-47 and Rev. Proc. 80-39, respectively, are designed to ensure that, in determining how many employees' children are eligible, a private foundation only includes those persons who meet the minimum eligibility requirements imposed by the program and those persons who also meet the minimum standards for admission to an educational institution for which grants or loans are available.

Accordingly, for purposes of determining how many employees' children are eligible for a scholarship or loan under the 10 percent test, a private foundation may include as eligible only those children (1) who submit a statement in writing (or on whose behalf a statement is submitted by his/her authorized representative) or (2) for whom information is maintained sufficient to demonstrate, other than by statistical or sampling techniques, that (i) they meet the foundations eligibility requirements; and (ii) they are enrolled in or have completed a course of study preparing them for admission to an educational institution at the level for which the scholarships or loans are available, have applied or intend to apply to such an institutions, and expect, if accepted, to attend such an educational institution in the immediately succeeding academic year; or (iii) they currently attend an educational institution for which the scholarships or loans are available but are not in the final year for which an award may be made.

SEC. 4 EFFECT ON OTHER REVENUE PROCEDURES

Rev. Proc. 76-47 and Rev. Proc. 80-39 are clarified.