

**Internal Revenue Service
P.O. Box 2508, Room 7008
Cincinnati, OH 45201**

**Department of the Treasury
Exempt Organizations
Rulings and Agreements**

Release Number: **200926038**
Release Date: 6/26/09
Date: April 3 2009

Employer Identification Number:

Contact Person - ID Number:

Contact Telephone Number:

(phone)

(fax)

UIL# 4945.04-04

Legend

B = Fund
C = Corporation
D = Company #1
E = Company #2
F = Person
x = \$amount

Dear

We have considered your request for advance approval of your employer-related grant-making program under section 4945(g)(1) of the Internal Revenue Code, dated, September 15, 2008.

Our records indicate that B was recognized as exempt from Federal income tax under section 501(c)(3) of the Code and that it is classified as a private foundation as defined in section 509(a).

Your letter indicates that B will operate a grant-making program called B. The program will exist to benefit C employee's families who are victims of "qualified disasters" (defined in IRS publication 3833) as determined by the B's Board of Directors.

The program, B, provides funds for tuition and related expenses such as books, supplies, and equipment. An amount not to exceed x annually is awarded to each recipient. This financial assistance cap will be reviewed annually by the Foundation's Board of Directors and will be adjusted, if merited, on a program-wide basis to account for increases in the Consumer Price Index and educational costs in particular. All funding by the program is for study at educational institutions described in IRC section 170(b)(1)(A)(ii). The program also provides funding in particular cases to individuals of elementary or high school age who have "special needs".

To assist with operating the program, B will hire D, a division of E. E is a non-profit organization and public charity. D will perform various administrative tasks for B and will also appoint the selection committee (consisting of D personnel) to award the scholarships. These individuals will not be current or former employees of B or C. Continued employment with C by the recipient or recipient's parents is not a factor that is considered for continued financial assistance under the program. B will continue to retain the administrative services of F, who has helped administer the B program since its inception in

B will define the eligibility requirements for the Fund's scholarship program. Recipients must be 22 years of age or younger at the start of the first year of their scholarship to receive assistance. Each individual recipient will continue to qualify for an annual scholarship award for as long as he or she is enrolled for study at a qualified educational organization and maintains a minimum grade point average (GPA) of "C" or its equivalent for undergraduate studies and a "B" GPA for graduate studies. Any recipient who falls below the required GPA for any semester will have a semester to improve his or her GPA before the funding is discontinued. After two semesters with a GPA that does not meet funding requirements, scholarship funding will be discontinued until the individual demonstrates intent for continuing his or her education and satisfying the GPA requirements by submitting a new application and meeting such other requirements as B determines.

B and C will not use the program to recruit new employees for C or to induce current C employees to continue their employment or otherwise to follow a course of action sought by C.

Scholarships will be awarded directly to the educational institution by E in accordance with its administrative procedures. B (with assistance from D) will track matriculation and grades of scholarship recipients to ensure continued eligibility for participation in the program. Recipients of awards will be required to submit to B evidence of maintaining their enrollment and GPA each semester.

B agrees to maintain records that include:

- (i) Information used to evaluate the qualification of potential grantees;
- (ii) Identification of the grantees (including any relationship of any grantee to the B);
- (iii) The amount and purpose of each grant; and
- (iv) All grantee reports and other follow-up data obtained in administering the B's scholarship program.

B expects to satisfy the 10% component of the Rev. Proc. 76-47 "percentage test" as explained as follows: Assuming potential eligibility of all C employees' children, B will make scholarship grants to less than 10% of such children. The group of potentially eligible applicants is more than 15,000 in number. The B expects to pay about 50 scholarships per year.

The B's process for selecting individuals is completely objective and non-biased. There will be no restrictions or limitations in the selection process based on race, color, religion, or national or ethnic origin of the applicants. Decisions on applicants to receive scholarships will be based solely on compliance with the program's eligibility requirements and need.

Sections 4945(a) and (b) of the Code impose certain excise taxes on "taxable expenditures" made by a private foundation.

Section 4945(d)(3) of the Code provides that the term "taxable expenditure" means any amount paid or incurred by a private foundation as a grant to an individual for travel, study, or other similar purposes by such individual, unless such grant satisfies the requirements of subsection (g).

Section 4945(g) of the Code provides that section 4945(d)(3) shall not apply to individual grants awarded on an objective and nondiscriminatory basis pursuant to a procedure approved in advance if it is demonstrated that:

- 1) The grant constitutes a scholarship or fellowship grant which is subject to the provisions of section 117(a) and is to be used for study at an educational organization described in section 170(b)(1)(A)(ii);

- 2) The grant constitutes a prize or award which is subject to the provisions of section 74(b), if the recipient of such prize or award is selected from the general public, or
- 3) The purpose of the grant is to achieve a specific objective, produce a report or similar product, or improve or enhance a literary, artistic, musical, scientific, teaching, or other similar capacity, skill, or talent of the grantee.

Section 53.4945-4(c)(1) of the Regulations provides that to secure approval, a private foundation must demonstrate that:

- (i) Its grant procedure includes an objective and nondiscriminatory selection process;
- (ii) Such procedure is reasonably calculated to result in performance by grantees of the activities that the grants are intended to finance; and
- (iii) The foundation plans to obtain reports to determine whether the grantees performed activities that the grants are intended to finance.

Revenue Procedure 76-47, 1976-2 C.B. 670, sets forth guidelines to be used in determining whether a grant made by a private foundation under an employer-related program to a child of an employee of the particular employer to which the program relates is a scholarship grant that meets the provisions of section 117(a) of the Code (as that section read before the Tax Reform Act of 1986). If a private foundation's program satisfies the seven conditions set forth in Sections 4.01 through 4.07 of Rev. Proc. 76-47 and meets the percentage test described in Section 4.08, the Service will assume the grants meet the provisions of section 117(a), as that section read before the Tax Reform Act of 1986.

You have agreed that procedures in awarding grants under your program will be in compliance with Sections 4.01 through 4.07 of Rev. Proc. 76-47 (without regard to the amendments to section 117(a) made by the Tax Reform Act of 1986). In particular, the selection of individual grant recipients will be made by a selection committee the members of which are totally independent and separate from the private foundation, the foundation's creator, and the relevant employer. The grants will not be used as a means of inducement to recruit employees nor will a grant be terminated if the employee leaves the employer. The recipient will not be restricted in a course of study that would be of particular benefit to the relevant employer or to the foundation.

Section 4.08 of Rev. Proc 76-47 provides a percentage test guideline. It states in the case of a program that awards grants to children of employees of a particular employee, the program meets the percentage test if either of the following tests are met: the number of grants awarded under that program in any year to such children do not exceed 25 percent of the number of employees' children who were eligible, were applicants for such grants, and were considered by the selection committee in selecting the recipients of grants in that year, or the number of grants awarded under the program 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.

You have agreed that your program will meet the requirements of either the 25 percent or 10 percent percentage test of Section 4.08 applicable to a program that awards grants to children of employees of a particular employer. Records should be maintained to show that you meet the applicable percentage test of Section 4.08

This determination is issued with the understanding that in applying the 10 percent test applicable to employees' children set forth in Rev. Proc. 76-47, you will include as eligible only those children who meet the eligibility standards described in Rev. Proc. 85-51, 1985-2 C.B. 717.

This determination will remain in effect as long as the procedures in awarding grants under your program remain in compliance with Sections 4.01 through 4.08 of Rev. Proc. 76-47 (without regard to the amendments to section 117(a) made by the Tax Reform Act of 1986). If you enter into any other program covering the same individuals, the percentage test of Rev. Proc. 76-47 must be met in the aggregate.

Based on the information submitted and assuming your award programs will be conducted as proposed, your procedures for granting the awards comply with the requirements contained in section 4945(g)(1) of the Code and that awards granted in accordance with such procedures will not constitute "taxable expenditures" within the meaning of section 4945(d)(3).

In addition, we have determined that awards made under your procedures are excludable from the gross income of the recipients subject to the limitations provided by section 117 of the Code.

This determination is conditioned on the understanding that there will be no material change in the facts upon which it is based. It is further conditioned on the premise that no grants will be awarded to foundation managers, or members of the selection committee, or for a purpose that is inconsistent with the purpose described in section 170(c)(2)(B) of the Code.

The approval of your employer-related grant-making program is a one-time approval. This determination only covers the grant programs described above. Thus, approval shall apply to subsequent grant programs only as long as the standards and procedures under which they are conducted do not differ materially from those described in your request.

Any funds you distribute to individuals must be made on a true charitable basis in furtherance of the purposes for which you are organized. Therefore, you should maintain adequate records and histories so that any or all grant distributions can be substantiated upon request by the Internal Revenue Service.

This determination is directed only to the organization that requested it. Section 6110(j)(3) of the Code provides that it may not be used or cited as a precedent.

You must report any future changes in your grant making procedures. Please keep a copy of this letter in your permanent records.

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

If you have any questions, please contact the person whose name and telephone number are shown above.

Sincerely yours,

Robert Choi
Director, Exempt Organizations
Rulings and Agreements

Enclosures
Notice 437
Redacted copy of letter