

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

Department of the Treasury

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Employee Identification Number:

Contact Person - ID Number:

Contact Telephone Number:

UIL 4945.04-04

LEGEND

**B= Name of Organization
C= Name of grant program
D= Name of Employer
E= Geographical location
Date 1 =
Date 2 =
x= Total grant amount available**

Dear Sir or Madam:

We have considered the request of the applicant, named B, for advance approval of an employer-related grant-making program under section 4945 (g)(1) of the Internal Revenue Code on Date 1.

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). In addition, our records indicate that B received advance approval of grant-making procedures from the Internal Revenue Service on Date 2 for the current scholarship program to undergraduate students which complied with the requirements of section 4945(g)(1) according to procedures that would not be taxable expenditures within the meaning of section 4945(d)(3).

Your letter indicates that B will operate an additional grant-making program called C. The program provides funds for the children, step-children or children under the legal guardianship of D employees meeting enrollment criteria. The scholarships will not be used as a recruitment tool or an inducement to continue work. All participating children must be enrolled in the program to attain eligibility status. An enrollment form must be completed and submitted to the scholarship program manager for each child entering the program. It will be the responsibility of the employee who enrolled the child to submit undeniable proof that the child's academic performance has met the criteria for the scholarship award. An individual scholarship account will be established for each child receiving the scholarship award. The number of students qualifying academically

for scholarship money will be divided into x. There shall be no more than thirty (30) scholarships awarded in any calendar year, this amount not to exceed 25% of the total number of participants for the same year, this being consistent with the percentage test guidelines as set out in Section 4.08 of Rev. Proc. 76-47. B shall maintain records of both total participants and the annual recipients for each reporting period to substantiate these limits. For home schooled students, a transcript of student grades, from the institution providing the home school curriculum must be submitted to determine qualification for the scholarship award. This will be a continuous award of x annually or a lesser amount dependent upon B's ability to pay.

Upon successful completion of High School and enrollment in an accredited institution of advanced learning, the scholarship program participant will provide proper documentation of enrollment and the funds will be paid to the educational institutions. If the enrolled participant in the scholarship program fails to successfully complete high school, all scholarship funds awarded to the participant will be forfeited and transferred to another qualified individual in the program. If the grantee who has been awarded a scholarship does not use it within five (5) years from graduation from high school (excepting those individuals who cannot attend college because of military service – in those cases, it would extend 5 years beyond military service), the scholarship for that individual will be transferred to another individual who qualifies under the grant program. Children entered in the Scholarship program will still be eligible to apply for scholarships after their parent is no longer employed with D. All scholarship funds accrued by the child while eligible will remain in the child's account to be used after successful completion of High School. Any false information, misinformation or deception on the part of any D employee in the enrollment process or the proof of qualification for scholarship funds will be grounds for disqualification of all children enrolled under the employee's name, rendering them ineligible for the program. Additionally, all previous scholarship funds awarded to all children enrolled under the employee's name will be forfeited. Members of both B and D agree to not recruit employees, induce employees to continue employment or compel employees to follow any course of action based upon their children obtaining a scholarship.

The selection committee shall be made up of independent, professional educators from local school districts. A key element of the scholarship program is participation across multiple grade levels, the primary component of the selection process is strictly objective; the requirement of a grade point average of 3.5 or the equivalent. In the event of a tie between applicants, two scenarios shall be implemented. First, if there is sufficient availability of awards within the 25% limit as set out above, the award shall be split between the tied applicants. Secondly, if there is not available room under the cap, an alternative criteria will be implemented; that of comparative financial need to be assessed by the selection committee. It is the responsibility of the employee who enrolled the child to submit undeniable proof that the child's academic performance has met the criteria for the scholarship award. The executive director of B will tabulate the grades for record keeping purposes. The executive director will have no input into the decision making process or any control over the selection of scholarship recipients and B's CPA's will verify all calculations. No disqualified persons, as defined in the Internal Revenue Code Sec. 4946(a), or their family members shall be allowed to participate in the scholarship program. The process that makes up the awarding of the scholarships thereby takes any control out of the hands of B or D. Furthermore, no such disqualified person shall have input into the selection process for awarding scholarships. Students awarded the scholarships are enrolled in 1st through 12th grade of schools in the area. Students are awarded scholarships on a completely objective

basis. They either obtain the required grade-point-average or they do not. There is no relation to the employment of the recipients or their parents or the employer's line of business. Once awarded, the scholarship may not be terminated because of an employee leaving D. No child or participant in the scholarship program will be denied future participation in the program due to the misconduct on the part of or termination of employment of the parent. The children should not be punished for the deeds of the parent. There are no restrictions on the courses of study the child may pursue. However, they will be required to meet the minimum admissions standards of an educational institution as defined in section 170(b)(1)(A)(ii) and to attend such an institution, and a minimum period of employment by the employee is required for eligibility, this period may not exceed three years. No other employment-related criteria may affect eligibility. The scholarships will only be paid upon enrollment, by the participant, in an accredited institution. An individual scholarship account will be established for each qualifying child. The only disqualification is if the student does not complete high school; otherwise the account is for their use, even if college is delayed.

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 B);
- (iii) The amount and purpose of each grant; and
- (iv) All grantee reports and other follow-up data obtained in administering B's scholarship program.

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