

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

Department of the Treasury

Number: 201004038  
Release Date: 1/29/2010

Date: November 4, 2009

Employer Identification Number:

Contact Person - ID Number:

Contact Telephone Number:

LEGEND

UIL 4945.04-04

M= Organization  
N= Corporation  
Y= Grant Program

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 August 7, 2009.

Our records indicate that M 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 M will operate a grant-making program to award scholarship grants to employees, former employees and the children or immediate family members of current and former employees of N.

M expects to award scholarship grants annually (so long as at least one suitable candidate of quality can be identified) for study at an accredited secondary school, college or university.

Scholarship grants recipient will be chosen from among those qualified individuals who have submitted applications detailing their academic and financial backgrounds, as well as their proposed plans of study. Qualified individuals will consist of those individuals who, at the time of the awarding of a grant, (i) are employees, former employees, and the children or immediate family members of current and former employees of N, and (ii) are currently enrolled at, or who have applied to and meet the minimum standards for admission at, an accredited secondary school, college or university located in the United States.

An individual need not be, or have been, employed at N for a minimum period of time in order for him or her, and his or her children or immediate family members, to be an eligible recipient of the scholarship grants. M's scholarship grants will not be used to recruit employees to seek employment at, induce employees to continue their employment at, or otherwise compel employees to follow any course of action sought by N. In addition, M's scholarship grants will not be limited to certain individuals based on any employment-related factors, such as a current or former employee's position, services or duties.

M will publicize the availability of the scholarship grants and solicit application for the scholarship grants in company newsletters and through general email communications, as well as on the company website of N, with M clearly identified as the grantor of the scholarship grants. In addition, announcements of the names of the scholarship grant recipients will be published in company newsletters and through general email communications, as well as posted on the company website of N, again with M clearly identified as the grantor of the scholarship grants.

A Selection Committee of at least three persons who are independent of both M and N, and who have knowledge in the education field sufficient to evaluate applicants' potential will select scholarship grant recipients based on academic achievement, demonstrated leadership, significant extracurricular accomplishments and financial need. In selecting scholarship recipients, the Selection Committee may consider academic transcripts, aptitude test scores, personal recommendations from instructors or other independent sources, conclusions drawn from personal interviews, and any other information the Committee deems germane in assessing an applicant's qualifications. All scholarship grant recipients will be selected on an objective and non-discriminatory basis without regard to race, national origin or gender.

The Selection Committee may select one or more scholarship recipients each year from the class of eligible individuals, but the Selection Committee is not required to select a minimum number of scholarship recipients each year. In accordance with Section 4.08 of Revenue Procedure 76-47, as clarified by Revenue Procedure 85-51, the total number of scholarship grants awarded in any given year to children and immediate family members of employees of N will not exceed either (i) 25% of the number of eligible children and immediate family members who applied for the grants and were considered by the Selection Committee, or (ii) 10% of the number of employees' children and immediate family members who can be shown to be eligible for grants. Also in accordance with Revenue Procedure 76-47, the total number of scholarship grants awarded in any given year to employees of N will not exceed 10% of the number of eligible employees who applied for the grants and were considered by the Selection Committee.

The Selection Committee may forward the list of selected scholarship grant recipients to M's Board of Directors for the sole purpose of permitting the Board to verify the eligibility requirements and selection criteria followed by the Selection Committee in considering the eligible recipients and in making its selections. M's Board of Directors must award scholarship grants in the order recommended by the Selection Committee. The Board of Directors may reduce, but may not increase, the number of scholarship grant recipients selected by the Selection Committee.

Each scholarship grant will have a one-year term. Each scholarship grant recipient may annually reapply for an additional scholarship grant for each subsequent year of the scholarship grant recipient's secondary school, undergraduate or postgraduate education. An initial scholarship grant will not be terminated or an application for an additional scholarship grant declined solely because the recipient, or his or her parent or guardian, terminated employment with N subsequent to the awarding of the initial scholarship grant. In addition, by accepting a scholarship grant from M, the scholarship grant recipient is not obligated to pursue any particular course of study and may pursue any course of study of his or her own choosing using the scholarship grant funds.

Each scholarship grant will be in an amount not to exceed the cost of tuition and course-related fees, books, supplies and equipment at the applicable secondary school, college or university. In exceptional cases, the Selection Committee may decide to approve an additional amount that is sufficient to fund part or all of (i) room, board and housing-related expenses at the

secondary school, college or university, if the scholarship grant recipient obtains institution-provided housing; (ii) rent, utilities and housing-related expenses if the scholarship grant recipient does not obtain institution-provided housing; (iii) travel expenses to and from the scholarship grant recipient's residence to the secondary school, college or university; (iv) a computer and other technology-related expenses, if needed by the scholarship recipient; and (v) any other necessary living or educational expenses incurred by the scholarship grant recipient.

In the case of tuition, course-related fees, books, supplies and equipment, and room, board and housing-related expenses, M will pay, to the extent possible, the scholarship grant funds directly to the applicable secondary school, college or university that the scholarship grant recipient is attending. In the case of travel, computer, and other necessary living and educational expenses, M will either pay the application vendor or service provider directly or will reimburse the scholarship grant recipient once he or she has substantiated the expenses incurred with receipts or other supporting documentation.

The members of the Selection Committee will not be in a position to derive a private benefit, directly or indirectly, if certain potential scholarship grant recipients are recommended or selected, as the case may be, over others. The members of the Selection Committee will be entitled to reimbursement of reasonable out-of-pocket expenses incurred in connection with their attendance at meetings of the Selection Committee, such as travel and lodging costs.

No scholarship grants will be made (i) to substantial contributors of M, as defined in Code section 507(d)(2), who are individuals, (ii) to members of M's Board of Directors, (iii) to M's officers, (iv) to any other disqualified person with respect to M within the meaning of Code section 4946, (v) to any member of the Selection Committee, or (vi) to any family members of any of the persons listed in clauses (i) through (v) above. In addition, no scholarship grants will be made for a purpose that is inconsistent with the charitable purposes of M.

Each scholarship grant recipient will be required to submit to M, on an annual basis, a report of the recipient's courses taken and the grades received in each academic semester during the report period. Such a report must be verified by the secondary school, college or university attended by the scholarship grant recipient and must contain a statement by the recipient that the scholarship grant funds received have not been diverted for a purpose inconsistent with M's charitable and educational purposes. Upon completion of a scholarship grant recipient's study at the accredited institution for which the scholarship was granted, the recipient will be required to submit a final report to M containing the same information required in the annual reports and describing the recipient's accomplishments with respect to the scholarship grant.

M may not consider it necessary to obtain reports described above if (1) the grant is a scholarship subject to the provisions of Code section 117(a) and is to be used for study at an educational institution which normally maintains a regular faculty and curriculum and normally has a regularly-organized body of students in attendance at the place where its educational activities are carried on; (2) M elects to pay the scholarship grant directly to the applicable educational institution; and (3) the educational institution agrees to use the scholarship grant funds to defray the recipient's tuition and course-related fees, books, supplies and equipment expenses, or pay grant funds to the recipient only if he or she is enrolled at the educational institution and his or her standing at such institution is consistent with the purposes and conditions of the scholarship grant.

In the event that a scholarship grant recipient fails to comply with the terms and conditions of the scholarship grant (including the requirement to submit a report annually with respect to any academic year in which the scholarship grant recipient has received a scholarship grant), as set forth in a written letter of agreement between M and the scholarship grant recipient, M will conduct an investigation and take all reasonable and appropriate steps to recover any funds that the scholarship grant recipient has used for an improper purpose.

M will maintain all records relating to all scholarship grants for a period of four years after each scholarship grant is awarded or declined. These records will include (a) all scholarship grant applications, (b) a list showing the name and address of each scholarship grant recipient and a description of the educational and living expenses funded by the scholarship grants; and (c) a list showing the name and address of each applicant who did not receive a scholarship grant.

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