



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

Number: **201404015**  
Release Date: 1/24/2014

Date: September 10, 2013

Contact Person:

Identification Number:

Telephone Number:

Employer Identification Number:

UIL: 4945.00-00

Legend:

Date 1 =  
Date 2 =  
Trust =  
Grantor =  
Trustee =  
Hospital =  
County =  
Company =  
Community =

Dear \_\_\_\_\_ :

This is in response to your ruling request dated March 16, 2012 and amended on August 12, 2013, requesting whether proposed changes to your grant program will cause it to lose its tax-exempt status under I.R.C. § 501(c)(3), or cause grants to individuals to be taxable expenditures within the meaning of § 4945(d)(3).

Facts

The Trust is an irrevocable charitable trust, created on Date 1, by Grantor that is recognized as exempt from federal income tax under § 501(c)(3) and classified as a private foundation under § 509(a).

The Trust is a "charitable and educational trust" established to provide financial assistance to interns, residents, and students at Hospital, preparing for the medical profession or seeking graduate work in their profession, and to assist hospital personnel at Hospital, including, but not limited to, graduate nurses, student nurses, and paramedics to further their professional education. The grantees are limited to employees of Hospital.

The purpose of the Trust is to assist as many deserving persons as possible, and encourage them to assist themselves in securing needed funds in excess of the grant amount to complete

their training. Selection of grant recipients will be based solely upon substantial objective standards that are completely unrelated to the employment of the recipients or to the employer's line of business. Such standards as, but 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 awardees, financial need, and conclusions drawn from personal interviews as to motivation and character, may be utilized.

The Trust instrument provides that the grantees shall be selected by the selection committee, from among those individuals determined eligible by standards set by the selection committee. The amounts of each grant are also determined by the selection committee, and shall be applied to the payment of regular and customary charges for the specialized medical training undertaken by the grantee.

The Trust instrument currently requires that the selection committee consist of at least five individuals, consisting of the following persons: (1) the executive director of Hospital; (2) the supervisor of nurses of Hospital; (3) a practicing physician having a minimum of ten years of practice affiliated with Hospital; (4) an attorney in general practice in County; and (5) a person of standing in the Community as appointed by the other members of the selection committee.

The Trust instrument requires a corporate bank as trustee at all times.

The Trust instrument does not provide for a contingent class of beneficiaries should Hospital cease to exist, or materially change its operations, administration or organization.

On Date 2, Hospital was acquired by Company, a for-profit company, pursuant to a plan of bankruptcy approved by the US Bankruptcy Court. Trustee instituted a moratorium on grants at that time, due to concerns about tax implications arising from the acquisition by Company.

Trustee represents that it will judicially modify the terms of the trust from the terms in existence at the time of the Form 1023 submission by Trust when it first sought advance approval. The Trustee submitted a draft with the following proposed modifications, which we assume the court will approve for purposes of this ruling request:

- The grants shall not be used as an inducement to recruit or retain employees of Hospital (pertinent to Condition 1 of Rev. Proc. 76-47).
- The selection committee shall consist of persons appointed by the trustee and shall include (i) an officer or employee of the trustee; an attorney practicing in County; and (iii) no fewer than three persons of standing in Community (pertinent to Condition 2 of Rev. Proc. 76-47).
- At no time shall any of the selection committee consist of current or former officers, directors, or employees of Hospital. At no time shall any of the selection committee consist of any person who would be a disqualified person, as that term is defined in §4946(d), with respect to Hospital or Grantor (pertinent to Condition 2 of Rev. Proc. 76-47).

- The grantees shall be selected according to objective standards, unrelated to the grantee's employment, including, but not limited to (i) being eligible for matriculation in the course of study for which the grantee is applying and meeting the admission requirements of the educational provider and (ii) the grantee receiving satisfactory grades in and completing the course of study (pertinent to Condition 3 of Rev. Proc. 76-47).
- All employees at Hospital will be eligible for the grants, regardless of occupation (pertinent to Condition 3 of Rev. Proc. 76-47).
- The grant shall not be terminated if a grantee is no longer employed by Hospital (pertinent to Condition 5 of Rev. Proc. 76-47)
- The grantees shall not be required to perform teaching, research, or other services for Hospital (pertinent to Condition 5 of Rev. Proc. 76-47).
- The grants will be applicable to education related to any occupation or profession, and would not be limited to medical education (pertinent to Condition 6 of Rev. Proc. 76-47).
- Checks will be made to the employee directly, and the trustee will require proof of payment to the educational institution from the employee.
- The trustee will investigate any and all cases of fraud or misrepresentation in courts of law.
- In the event that the Trust's purposes become impossible or illegal to carry out, it will terminate and its assets shall be distributed for one or more exempt purposes within the meaning of § 501(c)(3).

#### Rulings Requested

You have requested the following rulings:

1. Whether the proposed changes to the Trust's grant program will cause Trust to lose its tax-exempt status under § 501(c)(3); and
2. Whether grants to individuals subject to the proposed changes to the Trust's grant program will be taxable expenditures within the meaning of § 4945(d)(3).

#### Law

I.R.C. § 117(a) states gross income does not include any amount received as a qualified scholarship by an individual who is a candidate for a degree at an educational organization described in section 170(b)(1)(A)(ii).

I.R.C. § 501(c)(3) provides exemption from taxation for various entities organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes..., no part of the net earnings of which inures to the benefit of any private shareholder

or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation, and which does not participate in, or intervene in, any political campaign on behalf of any candidate for public office.

I.R.C. § 4945(d)(3) provides the term "taxable expenditure" includes 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 § 4945(g).

I.R.C. § 4945(g) provides § 4945(d)(3) shall not apply to an individual grant awarded on an objective and nondiscriminatory basis pursuant to a procedure approved in advance by the Secretary, if it is demonstrated to the satisfaction of the Secretary that:

- (1) the grant constitutes a scholarship or fellowship grant which would be subject to the provisions of § 117(a) and is to be used for study at an educational organization described in § 170(b)(1)(A)(ii);
- (2) the grant constitutes a prize or award which is subject to the provisions of § 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 other similar product, or improve or enhance a literary, artistic, musical, scientific, teaching, or other similar capacity, skill, or talent of the grantee.

Treas. Reg. § 1.501(c)(3)-1(a)(1) provides that in order to be exempt as an organization described in § 501(c)(3), an organization must be both organized and operated exclusively for one or more of the purposes specified in § 501(c)(3). If an organization fails to meet either the organizational test or the operational test, it is not exempt.

Treas. Reg. § 1.501(c)(3)-1(b)(4) provides an organization is not organized exclusively for one or more exempt purposes unless its assets are dedicated to an exempt purpose.

Treas. Reg. § 1.501(c)(3)-1(a)(2) provides the term *exempt purpose or purposes* means any purpose or purposes specified in section 501(c)(3).

Treas. Reg. § 53.4945-4(d) states that a request for advance approval of a foundation's grant procedures must fully describe the foundation's procedures for awarding grants and for ascertaining that such grants are used for the proper purposes, and that such approval shall apply to a subsequent grant program as long as the procedures under which it is conducted do not differ materially from those described in the request to the Commissioner. The request must contain the following items:

- (i) A statement describing the selection process that is sufficiently detailed for the Commissioner to determine whether the grants are made on an objective and nondiscriminatory basis.
- (ii) A description of the terms and conditions under which the foundation ordinarily makes such grants, that is sufficient to enable the Commissioner to determine whether

the grants awarded under such procedures would meet the requirements of paragraph (1), (2), or (3) of section 4945(g).

(iii) A detailed description of the private foundation's procedure for exercising supervision over grants, as described in § 53.4945(c)(2) and (3).

(iv) A description of the foundation's procedures for review of grantee reports, for investigation where diversion of grant funds from their proper purposes is indicated, and for recovery of diverted grant funds.

Rev. Rul. 81-217, 1981-36 I.R.B. 16, provides, in part, that where a private foundation pays grants to an organization that is not a private foundation to provide scholarships only to children of a particular employer, the grants are grants to individuals under § 4945(d)(3) for which advance approval under § 4945(g)(1) is required, and are 'employer-related' grants to which the guidelines of Rev. Proc. 76-47 apply.

Rev. Proc. 76-47, 1976-2 C.B. 670, provides guidelines to be used in determining whether a grant made by a private foundation under an employer-related grant program to an employee of the employer to which the program relates is a scholarship or fellowship grant subject to the provisions of §117(a), and therefore, excludable as a taxable expenditure under § 4945(g)(1).

The procedure states that an employer-related program is a program that treats some or all of the employees of a particular employer as a group from which grantees of some or all of the foundation's educational grants will be selected, limits the potential grantees for some or all of the foundation's grants to individuals who are employees of a particular employer, or otherwise gives such individuals a preference or priority over others in being selected as grantees.

The procedure further provides that if the private foundation's educational grants are not scholarships or fellowship grants subject to the provisions of §117(a) or otherwise qualify under § 4945(g)(2) or (3) they would be "taxable expenditures" within the meaning of § 4945(d), and might, depending upon the circumstances, lead to a loss of the private foundation's exempt status. If a private foundation's program satisfies the seven conditions and the percentage test, or a facts and circumstances test as an alternative to the percentage test, the Service will assume the grants awarded under the program to employees will be scholarships or fellowship grants subject to the provisions of §117(a). If a private foundation's program does not satisfy one or more of the seven conditions in Rev. Proc. 76-47, the Service will not issue a ruling that the grants awarded are scholarships or fellowship grants under §117. One of those seven conditions is that the selection of grant recipients must be made by a committee consisting wholly of individuals totally independent and separate from the private foundation, its organizer, and the employer concerned.

### Analysis

I.R.C. § 4945(d) provides that a grant by a private foundation to an individual for travel, study, or other similar purpose by such individual is a "taxable expenditure" by the private foundation for purposes of the tax imposed by § 4945 unless such grant satisfies the requirements of § 4945(g). In addition to satisfying either § 4945(g)(1), (2), or (3), a private foundation must show

its grants are made on an objective and nondiscriminatory basis under procedures approved in advance by the Secretary. I.R.C. § 4945(g). A request for advance approval of a foundation's grant procedures must fully describe the foundation's procedures for awarding grants and for ascertaining that such grants are used for the proper purposes, and that such approval shall apply to a subsequent grant program as long as the procedures under which it is conducted do not differ materially from those described in the request to the Commissioner. Treas. Reg. § 53.4945-4(d). Trust is requesting advance approval of the grant program as modified.

As described below, the terms of the Trust modifications describe a selection process that is sufficiently detailed for the Commissioner to determine whether the grants are made on an objective and nondiscriminatory basis and whether the grants awarded under such procedures would meet the requirements of paragraph (1), (2), or (3) of § 4945(g), in accordance with Treas. Reg. § 53.4945-4(d)(i) and (ii).

The proposed modifications to Trust's terms require the grantee to be eligible for matriculation in the course of study for which the grant application is made, meet admission, complete the course of study and receive satisfactory grades. Trustee states that those grants for degree completion are conditioned on the grantee providing the selection committee a report card and certificate of completion. Trustee states the selection committee monitors the report cards, and those not seeking degrees will be required to give the selection committee a certificate of completion or similar document. Based on the Trust's proposed modifications, these procedures meet the requirements of Treas. Reg. § 53.4945-4(d)(iii).

Lastly, Trustee states that checks will be made to the employee directly, and that Trustee will require proof of payment to the educational institution from the employee. Trustee further states it will investigate any and all cases of fraud or misrepresentation in courts of law. Based on the Trust's representations, these procedures meet the requirements of Treas. Reg. § 53.4945-4(d)(iv).

I.R.C. § 4945(g)(1) provides that a grant otherwise qualifying under §4945(g) will not be a taxable expenditure if it is demonstrated to the satisfaction of the Secretary that the grant is a scholarship or fellowship grant that is subject to the provisions of § 117(a). Rev. Proc. 76-47, 1976-2 C.B. 670, provides guidelines to be used in determining whether a grant made by a private foundation under an employer-related grant program to an employee of the employer to which the program relates is a scholarship or fellowship grant subject to the provisions of §117(a), and therefore, excludable as a taxable expenditure under § 4945(g)(1).

Rev. Proc. 76-47, 1976-2 C.B. 670, provides that an employer-related program is a program that treats some or all of the employees of a particular employer as a group from which grantees of some or all of the foundation's educational grants will be selected, limits the potential grantees for some or all of the foundation's grants to individuals who are employees of a particular employer, or otherwise gives such individuals a preference or priority over others in being selected as grantees. See also Rev. Rul. 79-131, 1979-1 C.B. 368, and Rev. Rul. 81-217, 1981-36 I.R.B. 16.

The Trust's grant program is employer-related because its grantees are limited to the employees of Hospital. Therefore, Rev. Proc. 76-47, *supra*, applies. Rev. Proc. 76-47, *supra*,

provides that if a private foundation's program satisfies (i) the seven conditions and (ii) the percentage test or a facts and circumstances test as an alternative to the percentage test, the Service will assume the grants awarded under the program to employees will be scholarships or fellowship grants subject to the provisions of §117(a). Rev. Proc. 76-47, *supra*, provides that if a private foundation's program does not satisfy one or more of the seven conditions, the Service will not issue a ruling that the grants awarded are scholarships or fellowship grants under §117.

One of the seven conditions is that the selection of grant recipients must be made by a committee consisting wholly of individuals independent and separate from the private foundation, its organizer, and the employer concerned. The Trust's proposed modifications satisfy this condition. Based on the foregoing and the representations that the trust modifications will be approved by a court of competent jurisdiction, all seven conditions are met.

Rev. Proc. 76-47, *supra*, requires that the Trust satisfy either a percentage test or a facts and circumstances test, in addition to the seven conditions. Based on the information provided, the Trust meets the facts and circumstances test. Trust was created and funded not by Hospital but by a benefactor of Hospital. Scholarships will be available to all employees of Hospital, and no longer limited to medical education. The selection committee is independent of Hospital and Trust. Typically, Trust makes grants to only about 6 percent of the employees. Those facts and circumstances, together with the other representations and restrictions contained in the trust, if modified as described above, indicate that the primary purpose of the program is educate the recipients as individuals rather than to provide extra compensation or employment incentive to them.

### Rulings

Based on the foregoing, subject to the representations that the terms of the Trust are judicially modified by a court of competent jurisdiction in materially similar form to the terms presented above:

1. The proposed changes to the Trust's grant program will not cause Trust to lose its tax-exempt status under § 501(c)(3); and
2. Grants to individuals subject to the proposed changes to the Trust's grant program will not be taxable expenditures within the meaning of § 4945(d)(3).

This ruling will be made available for public inspection under § 6110 after certain deletions of identifying information are made. For details, see enclosed Notice 437, *Notice of Intention to Disclose*. A copy of this ruling with deletions that we intend to make available for public inspection is attached to Notice 437. If you disagree with our proposed deletions, you should follow the instructions in Notice 437.

This ruling is directed only to the organization that requested it. Section 6110(k)(3) provides that it may not be used or cited by others as precedent.

This ruling is based on the facts as they were presented and on the understanding that there will be no material changes in these facts. This ruling does not address the applicability of any section of the Code or regulations to the facts submitted other than with respect to the sections

described. Because it could help resolve questions concerning your federal income tax status, this ruling should be kept in your permanent records.

If you have any questions about this ruling, please contact the person whose name and telephone number are shown in the heading of this letter.

In accordance with the Power of Attorney currently on file with the Internal Revenue Service, we are sending a copy of this letter to your authorized representative.

Sincerely,

Theodore Lieber  
Manager, Exempt Organizations  
Technical Group 3

Enclosure  
Notice 437