

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

Department of the Treasury

Number: **201833031**
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Employer Identification Number:

Contact person - ID number:

Contact telephone number:

Date: May 22, 2018

LEGEND

UIL: 4945.04-04

v dollars = Amount
w dollars = Amount
X = Program
Y = Company
Z = Company

Dear :

You asked for advance approval of your employer-related scholarship grant procedures under Internal Revenue Code Section 4945(g). This approval is required because you are a private foundation that is exempt from federal income tax. You requested approval of your scholarship program to fund the education of certain qualifying students.

Our determination

We approved your procedures for awarding employer-related scholarships. Based on the information you submitted, and assuming you will conduct your program as proposed, we determined that your procedures for awarding employer-related scholarships meet the requirements of Code Section 4945(g)(1). As a result, expenditures you make under these procedures won't be taxable.

Also, awards made under these procedures are scholarship or fellowship grants and are not taxable to the recipients if they use them for qualified tuition and related expenses (subject to the limitations provided in Code Section 117(b)).

Description of your request

Your letter indicates you will operate an employer-related scholarship program called X. The purpose of X is to establish and operate an educational scholarship program for the employees of, and the dependents of the employees of, Y.

You initially plan to offer four scholarships in the amount of v dollars to eligible employees of Y and two scholarships in the amount of w dollars to dependent children of eligible employees of Y. You will determine by the end of each calendar year the number and

amount of grants to be made available for the following year based on a projected budget.

Awards are not renewable; however, students may reapply to the program each year they meet eligibility requirements.

The employees of Y will receive notice of X in the form of company press releases, posters, and company emails.

The following criteria will be used to determine eligibility for X:

- Applicants must be full-time or part-time active employees of Y who have a minimum of six months of service with the company as of the application deadline date, or be dependent children, age 26 and under, of active Y employees (full-time) who have a minimum of six months employment with the company as of the application deadline date.
- Y employee applicants must be enrolled or be planning to be enrolled in at least a part-time undergraduate or graduate course of study (with a minimum of six credit hours) at an accredited two-year or four-year college or university, graduate school, or a certificate from a vocational/technical school and working towards a post-secondary degree.
- Applicants that are dependent children of employees of Y must be high school seniors or current post-secondary undergraduate or graduate students who are enrolled, or are planning to enroll, in a full-time or part-time undergraduate or graduate course of study (with a minimum of six credit hours) at an accredited two year or four-year college or university, graduate school, or a certificate from a vocational/technical school.
- Dependent children of employees of Y are defined as biological, step, or legally adopted children living in the employee's household or primarily supported by the employee, and are age 26 or under.

The X selection criteria will include consideration of academic performance, demonstrated leadership, and participation in school and community activities, work experience, a statement of career and educational goals and objectives, and unusual personal or family circumstances.

You have engaged Z, an unrelated third party, to administer X. Z will evaluate applications, select and notify winners, confirm school enrollment, and provide you with management reports to summarize program activity and results. Z will have the sole decision-making authority to evaluate scholarship applications and select award recipients based on the above-mentioned criteria provided by you.

You plan to conduct your scholarship program in accordance with the guidelines of Sections 4.01 through 4.07 of Revenue Procedure 76-47; however, you cannot guarantee that your scholarship program will meet the percentage guidelines set out Rev. Proc. 76-47 each year. You reasonably believe that your program will satisfy the 10 percent test of Section 4.08 each year but you have not determined whether the program will in fact meet that test.

You will undertake reasonable efforts to secure sufficient applications to satisfy the 25 percent test of the Section 4.08 but you also anticipate that in some years the number of eligible applications will be insufficient to satisfy the test. Due to the small number and size of the scholarship program relative to the number of employees of Y, you have determined that the expense that would needed to be incurred to determine whether you met the percentage tests each year would be greatly out of proportion to the amount and size of the scholarship program.

However, you firmly believe your scholarship program meets the “facts and circumstances” test under Rev. Proc. 76-47 and is analogous to Rev. Rul. 86-90, where the IRS ruled that that taxpayer’s grant program satisfied the “facts and circumstances” test. The primary purpose of your scholarship program, X, is to educate recipients in their individual capacities, and not to provide extra compensation or other employment incentives to employees of Y. The following facts support you meeting the “facts and circumstances” test:

- (i) Independence of the Selection Committee: You have retained the services of Z, an entirely independent party from Y, to serve as the selection committee for the scholarship recipients.
- (ii) Unrestricted Course of Study: The recipients of the scholarships are not limited in any manner in the course of study they seek to pursue or the institution they desire to pursue their course of study. The only requirements are that recipients are enrolled, or are planning to enroll, in a full-time or part-time undergraduate or graduate course of study (with a minimum of six (6) credit hours) at an accredited two-year or four-year college or university, graduate school, or a certificate from a vocational/technical school.
- (iii) Objective Selection Criteria: Through Z, recipients for scholarships will be selected based on objective criteria, such as consideration of academic performance, demonstrated leadership, participation in school and community activities, work experience, a statement of career and educational goals and objectives, unusual and interesting family circumstances, and outside appraisals and recommendations.
- (iv) Eligible Employees/Dependents: There are no specific groups of eligible employees and there are no specific groups of employees that are disqualified from receiving a scholarship. Further, continued employment is

not a pre-requisite for continued eligibility, provided that the recipient received his or her award while he/she or his or her parent was employed by Y.

- (v) **Size and Number of Scholarships:** You plan to offer a small number of scholarships and the amount of each grant is relatively small. This small amount is unlikely to be seen as incentive compensation for the employees of Y.

You represent that you will complete the following: (1) arrange to receive and review grantee reports annually and upon completion of the purpose for which the grant was awarded, (2) investigate diversion of funds from their intended purposes, (3) take all reasonable and appropriate steps to recover the diverted funds, ensure other grant funds held by the grantee are used for their intended purposes, and (4) withhold further payments to grantees until you obtain grantees' assurances that future diversions will not occur and that grantees will take extraordinary precautions to prevent future diversions from occurring.

You represent that you will maintain all records related to the following: (1) individual grants including information to evaluate grantees, (2) grantees which are identified as a disqualified person, (3) how the amount and purpose of each grant was established, and (4) how you established supervision and investigation of the grants described above.

Basis for our determination

The law imposes certain excise taxes on the taxable expenditures of private foundations (Code Section 4945). A taxable expenditure is any amount a private foundation pays as a grant to an individual for travel, study, or other similar purposes. However, a grant that meets all of the following requirements of Code Section 4945(g) is not a taxable expenditure.

- The foundation awards the grant on an objective and nondiscriminatory basis.
- The IRS approves in advance the procedure for awarding the grant.
- The grant is a scholarship or fellowship subject to Code Section 117(a).
- The grant is to be used for study at an educational organization described in Code Section 170(b)(1)(A)(ii).

Revenue Procedure 76-47, 1976-2 C.B. 670, provides guidelines to determine whether grants a private foundation makes under an employer-related program to employees or children of employees are scholarship or fellowship grants subject to the provisions of Code Section 117(a). If the program satisfies the seven conditions in sections 4.01 through 4.07 of Revenue Procedure 76-47 and meets either the applicable percentage tests described in section 4.08 of Revenue Procedure 76-47 or relevant facts and circumstances, we will assume the grants are subject to the provisions of Code Section 117(a).

These tests require that:

- The number of grants awarded to employees' children in any year won't exceed 25 percent of the number of employees' children who were eligible for grants, were applicants for grants, and were considered by the selection committee for grants, or
- The number of grants awarded to employees' children in any year won't exceed 10 percent of the number of employees' children who were eligible for grants (whether or not they submitted an application), or
- The relevant facts and circumstances to ensure the primary purpose of the program is not to provide extra compensation or other employment incentive and the primary purpose is to educate recipients in their individual capacities.

You represented that your procedures for awarding grants under this program will meet the requirements of Revenue Procedure 76-47. In particular:

- An independent selection committee whose members are separate from you, your creator, and the employer will select individual grant recipients.
- You will not use grants to recruit employees nor will you end a grant if the employee leaves the employer.
- Your selection criteria are based upon objective standards that are completely unrelated to employment with Y.
- You will not limit the recipient to a course of study that would particularly benefit you or the employer.

Other conditions that apply to this determination:

- This determination only covers the grant program described above. This approval will apply to succeeding grant programs only if their standards and procedures don't differ significantly from those described in your original request.
- This determination is in effect as long as your procedures comply with Sections 4.01 through 4.07 of Revenue Procedure 76-47 and either the applicable percentage tests described in section 4.08 of Revenue Procedure 76-47 or relevant facts and circumstances. If you establish another program covering the same individuals, that program must also meet the percentage test or relevant facts and circumstances.
- This determination applies only to you. It may not be cited as a precedent.
- You cannot rely on the conclusions in this letter if the facts you provided have changed substantially. You must report any significant changes to your program to the Cincinnati Office of Exempt Organizations at:

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

- You cannot award grants to your creators, officers, directors, trustees, foundation managers, or members of selection committees or their relatives.
- All funds distributed to individuals must be made on a charitable basis and further the purposes of your organization. You cannot award grants for a purpose that is inconsistent with Code Section 170(c)(2)(B).
- You should keep adequate records and case histories so that you can substantiate your grant distributions with the IRS if necessary.

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

Please keep a copy of this letter in your records.

If you have questions, please contact the person listed at the top of this letter.

Sincerely,

Stephen A. Martin
Director, Exempt Organizations
Rulings and Agreements