

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

**Department of the Treasury**

Release Number: **201838010**  
Release Date: 9/21/2018  
Date: June 28, 2018

**Employer Identification Number:**

**Contact person - ID number:**

**Contact telephone number:**

**LEGEND**

B = Program  
C = Corporation  
x dollars = Amount

UIL: 4945.04-04

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 B. You plan to offer B to deserving students both abroad and in the United States to continue their education.

Your chairman is the founder of C, a for-profit corporation. Along with his wife, they are funding this program. The fund provides scholarships for deserving students, including current and former employees of C and their families. Substantial contributors, your

managers, officers, directors, as well as their family members, are ineligible to participate in the program.

You plan to award ten scholarships in amounts up to x dollars each. You hope to scale up to twenty or more scholarships per year, depending on the availability of funding, the particular needs of each recipient, and the overall success of the program. B is advertised through C's website and through foreign and international websites that have a potential of drawing a wide audience.

An application must be submitted. Individuals eligible must attend a top 100 college or university. The applicant must have a distinguished academic record and demonstrate the ability to serve as a leader in his or her community. Three letters of recommendation must be submitted and financial need will be considered. An essay must be submitted regarding personal goals and interests in leadership development. Your scholarship committee uses a detailed rubric to rate the applicants.

The scholarships are renewable. To seek renewal, an application must be submitted and the applicant must (1) show the use of monies awarded, (2) maintain full-time university or college enrollment, (3) maintain a minimum 3.0 GPA (or its foreign equivalent), and (4) demonstrate leadership development.

The number of grants will be determined annually by your board. It will depend on the number of applicants and your philanthropic priorities. You have not yet granted any scholarships and you are still in the process of finalizing your selection committee.

You represent that in the beginning, recipients will most likely be limited to employees or former employees of C and their families. While C may provide funding for the program, C is not a disqualified person with relation to you. Neither C nor executives of C will control how the scholarship program is operated. C will not be able to use B as an inducement to their employees to continue employment.

It is expected that the number of scholarship recipients who are children of employees working for C shall not exceed either (1) 25 percent of the number of employee families who (i) were eligible, (ii) applied for such grants, and (iii) were considered by the selection committee in selecting the recipients, or (2) 10 percent of the number of employee families who can be shown to be eligible for grants (whether or not they submitted an application) in that year. Similarly, you expect that the number of awards to C's employees will not exceed 10 percent of the number of employees who, (i) were eligible, (ii) were applicants for such grants, and (iii) were considered by the selection committee in selecting the recipients of the grants in that year. In the future, as the program grows, it is expected that scholarships will be available for deserving students that are not affiliated with C.

You represent that one of your founders will serve on the selection committee along with three members of a local charity and a family friend who has no business relationship with the founders, you, or C. Representatives of C will not be included on the selection



committee. As the scholarship program grows, it is expected that scholarships will be available for deserving students that are not affiliated with C. You have no plans to limit the scholarships to C employees or their children. The scholarships are also available to former employees of C and their children thereby eliminating the potential for any disguised compensation to current employees of C. C does not and will not use the scholarship program as a recruiting tool for potential employees since it has no control over the selection of scholarship recipients and scholarships are available to students pursuing any degree (ranging from mathematics to the arts) at a top university or college.

You will check the OFAC List of Specially Designated Nationals and Blocked Persons for names of individuals and entities with whom you are dealing to determine if they are included on the list. You will comply with all statutes, executive orders, and regulations that restrict or prohibit persons from engaging in transactions and dealings with designated countries, entities, or individuals, or otherwise engaging in activities in violation of economic sanctions administered by OFAC. If necessary, you will acquire from OFAC the appropriate license and registration where necessary.

You represent 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 a 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: (1) maintain all records relating to individual grants including information obtained to evaluate grantees, (2) identify whether a grantee is a disqualified person, (3) establish the amount and purposes of each grant, and (4) establish that you undertook the supervision and investigation of 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 the applicable percentage tests described in section 4.08 of Revenue Procedure 76-47, we will assume the grants are subject to the provisions of Code Section 117(a).

You represented that your grant program will meet the requirements of either the 25 percent or 10 percent percentage test in Revenue Procedure 76-47. 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 number of grants awarded to employees in any year won't exceed 10 percent of the number of employees who were eligible for grants, were applicants for grants, and were considered by the selection committee for grants.

You further represented that you will include only children who meet the eligibility standards described in Revenue Procedure 85-51, 1985-2 C.B. 717, when applying the 10 percent test applicable to employees' children.

In determining how many employee children are eligible for a scholarship under the 10 percent test, a private foundation may include only those children who submit a written statement or who meet the foundation's eligibility requirements. They must also satisfy certain enrollment conditions.

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.
- 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 with either of the percentage tests of Section 4.08. If you establish another program covering the same individuals, that program must also meet the percentage test.
- 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