

Internal Revenue Service

P.O. Box 2508
Cincinnati, OH 45201

Department of the Treasury

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Employer Identification Number:

Contact person - ID number:

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Contact telephone number:

LEGEND

UIL: 4945.04-04

B = School
C = Name
D = Employer
E = Employer
F = Organization

X = Name
Y = Name

Dear :

You asked for advance approval of your 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 programs to fund the education of certain qualifying students.

Our determination

We approved your procedures for awarding scholarships and your procedures for awarding employer-related scholarships. Based on the information you submitted, and assuming you will conduct your programs as proposed, we determined that your procedures for awarding 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 a scholarship program called X and an employer related scholarship program called Y to be used by the recipients for undergraduate degrees and/or post high school technical schools with a strong educational component. The amount and number of scholarships awarded each year will vary depending on the amount of funds available to be distributed. In addition, award amounts for X and Y will be limited to only tuition as well as limited to a maximum payment of the tuition amount

then charged by B. Furthermore, your trustee in its sole discretion, has the authority to allocate the percentage of the distributable amount each year between X and Y.

Concerning the selection committees for X and Y, there will be a separate committee for each program known as the Scholarship Advisory Committee. The Scholarship Advisory Committees do not communicate with each other regarding recommendations for scholarships and no member of one Scholarship Advisory Committee will serve as a member of the other Scholarship Advisory Committee.

You will award all scholarships under X and Y on an objective and non-discriminatory basis, with neither race, creed, color, sex, age, religion, national origin nor disability being considered. No scholarship may be awarded to any disqualified person as defined in Code 4946 and no relative of the grantor will be a perspective recipient of any scholarship program.

Details of X

The purpose of X is to provide scholarships to high school graduates of C school system to attend a university or college selected by the recipient. High school graduates of C school system who demonstrate academic ability (limited to those students ranking in the upper fifty percent of the graduating class) and show active participation in school activities as well as show financial need are eligible to apply.

To promote X, administrators of C school system will prepare announcements, advertisements, solicitation materials and applications for distribution to the students directly through the high school. All eligible students must complete and timely submit an application including necessary attachments such as relevant financial information and official transcripts.

The applications will then be reviewed by the Scholarship Advisory Committee. The committee is composed of at least one school administrator, principal or vice- principal, guidance counselor, community leader and/or teacher. In the event one or more committee members resign, the remaining committee members and/or your trustee will select a qualified replacement.

After reviewing the applications, the Scholarship Advisory Committee is responsible for ranking the applicants based on the applicants' GPA, financial need and participation in school activities. The Scholarship Advisory Committee provides the names of those recommended to your Trustee who makes the final determination as to the number and amounts of scholarships awarded.

In addition, the scholarships under X are renewable for up to three years or until a bachelor's degree is obtained, whichever is earlier as long as the student maintains a GPA of 2.0 on a 4.0 scale and maintains a record of good standing at the college or university. Furthermore, to renew the scholarship, prior year recipients must submit a renewal application along with their most recent transcript or grade report to be considered. The Scholarship Advisory Committee then reviews the renewal applications

and makes recommendations to your Trustee. Your Trustee then makes the final determination as to the number of renewal scholarships and the amount awarded for each renewal scholarship.

Details of Y

The purpose of Y is to provide scholarships to children of employees of D and E to attend a university or college selected by the recipient. To be eligible, students must:

- Be children of employees of D or E;
- Be high school graduates;
- Demonstrate academic ability (limited to those students ranking in the upper fifty percent of the graduating class);
- Have participated in school activities.

To promote Y, advertising materials will be provided to the headquarters of D and E to solicit qualified students. D also advertises Y in a monthly newsletter while E advertises Y through company-wide announcements, memoranda and solicitation materials for distribution to the employees directly at the company. To apply for Y, eligible students must complete an application and timely submit it to you with all required attachments including their official transcript, an essay on their goals and a character recommendation from a teacher, school principal or employer.

To help administer Y, your trustee is contracting with F. F is responsible for the provision of the Scholarship Advisory Committee, which currently consists of members with several years' experience selecting qualified recipients of various scholarship programs.

Moreover, if one or more of the current committee members resign or are removed, there will be a qualified replacement by F. If your trustee removes or replaces F, your trustee will select a replacement Scholarship Advisory Committee to serve as the Scholarship Advisory Committee for Y.

Members of the Scholarship Advisory Committee for Y will review the scholarship applications and then rank the applicants based on applicants' GPA, their essay, the strength of their character reference and their participation in school activities. The committee will then forward the recommendations to your trustee for final review. Your trustee makes the final determination as to the amount and number of scholarships awarded for Y. Decisions of your trustee are final and justification for recipients will not be disclosed under any circumstances.

Further in compliance with Revenue Procedure 76-47, the Scholarship Advisory Committee:

- Will consider only those children who meet applicable minimum standards for admission to colleges and universities;
- Will select recipients based solely on substantial and identifiable objective standards completely unrelated to employment;

- Will not terminate any scholarship because the parent's employment has terminated;
- Will not condition the scholarship on the recipient choosing a course of study benefiting the parent's employer;
- Will not use the scholarship to recruit employees or induce their retention;
- Will ensure the awarding of the scholarship remains consistent with the overall disinterested purpose of enabling a recipient to obtain an education solely for the recipient's benefit.

In addition, the number of scholarships under Y awarded to employees' children in any year will be limited to 25% or less of the total number of employees' children who were eligible for grants, were applicants for the grants, and were considered by the Scholarship Advisory Committee for grants as provided by Revenue Procedures 76-47 and 80-39.

For any year in which the 25% test cannot be satisfied, potentially due to not enough applicants applying for Y to have at least one award under the 25% test, your trustee has the discretion to re-allocate the percentage of the distributable amount in any given year between Y and X. In this situation, your trustee will re-allocate the percentage of the distributable amount such that no more than one scholarship is awarded to a recipient under Y regardless of the number of applications received. This scenario meets facts and circumstances because limiting it to one under these conditions indicates this is not an inducement or fringe benefit nor will this benefit the employers in any fashion.

Scholarships under Y may be renewable for up to three years, or until a bachelor's degree is obtained, whichever is earlier. To be considered for renewal of their scholarship, prior year recipients must submit a renewal application along with their most recent transcript or grade report. Scholarships are renewable if the applicant maintains a G.P.A. of 2.0 on a 4.0 scale as well as maintains a record of good standing at the college or university in which the recipient is attending. The Scholarship Advisory Committee reviews the renewal applicants and makes a recommendation to your Trustee regarding the amount that should be awarded to each renewal applicant. Your Trustee in its discretion then makes the final determination as to the number of renewal scholarships and the amount awarded for each renewal scholarship.

Controls for both X and Y

Your trustee pays the scholarship proceeds for both X and Y directly to the university/college the recipient is attending. Your trustee also provides a letter to each university/college specifying that their acceptance of the funds constitutes their agreement to (i) refund any unused portion of the scholarship if a scholarship recipient fails to meet any term or condition of the scholarship; and (ii) notify your trustee if the scholarship recipient fails to meet any term or condition of the scholarship. If the university/school will not agree to such terms, your trustee will obtain the needed reports and grade transcripts from the scholarship recipient.

You represent that you will arrange to receive and review grantee reports annually and upon completion of the purpose for which the grant was awarded, investigate diversions of funds from their intended purposes, and take all reasonable and appropriate steps to recover diverted funds, ensure other grant funds held by a grantee are used for their intended purposes, and 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 relating to individual grants, including information obtained to evaluate grantees, identify whether a grantee is a disqualified person, establish the amount and purpose of each grant, and establish that you undertook the supervision and investigation of grants.

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 the provisions of 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 Y will generally meet the requirements the 25 percent percentage test in Revenue Procedure 76-47. This test requires 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. For any year in which the 25% test cannot be satisfied, potentially due to not enough applicants applying for Y to have at least one award under the 25% test, your trustee has the discretion to re-allocate the percentage of the distributable amount in any given year between Y and X. In this situation, your trustee will re-allocate the percentage of the distributable amount such that no more than one scholarship is awarded to a recipient under Y regardless of the number of applications received. This scenario meets facts and circumstances because limiting it to

one under these conditions indicates this is not an inducement or fringe benefit nor will this benefit the employers in any fashion.

You further represented that your procedures for awarding grants under Y will meet the requirements of Revenue Procedure 76-47:

- 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 programs 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 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.

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