

**Internal Revenue Service**

P.O. Box 2508  
Cincinnati, OH 45201

Release Number: **201940012**

Release Date: **10/4/2019**

Date: July 10, 2019

**Department of the Treasury**

**Employer Identification Number:**

**Contact person - ID number:**

**Contact telephone number:**

UIL: 4945.04-04

**LEGEND**

B = Employer Scholarship Program

C = Employer

x dollars = Total allocation for B

y dollars = Annual awards

z dollars = Maximum individual award

Dear

You asked for advance approval of your employer-related scholarship grant procedures and employer-related educational 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 and educational grants. 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) and that your procedures for awarding employer-related educational grants meet the requirements of Code Section 4945(g)(3). As a result, expenditures you make under these procedures won't be taxable.

Also, awards made under the employer-related scholarship grant program 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 grant program called B.



The purpose of B is to provide educational grants to qualifying individuals who are either employees, or children of employees, of C.

B will include elements of both Sections 4945(g)(1) and 4945(g)(3). For the Section 4945(g)(1) grants, the scholarships will cover tuition, books, and fees at accredited educational institutions. The Section 4945(g)(3) grants will cover the expenses of specialty summer camps and other summer programs, and for evening classes intended to enhance a literary, artistic, or musical talent or other skill of the grantee.

B will enable deserving individuals, chosen from among eligible C employees and dependent children of employees, to pursue educational advancement at educational institutions from kindergarten through graduate school and/or to improve their literary, musical, or artistic talents. Your objective is not to reward them as employees, but rather to identify deserving individuals from the pool of candidates based in C and help them improve their knowledge, skills, and talents as life-long learners.

You plan to allocate an amount in the range of x dollars to fund B for all years. Each year, you plan to make awards in the range of y dollars. No grantee will receive an annual award in excess of z dollars. The grants will be made to support two different paths of learning and self-improvement:

- Section 4945(g)(1) scholarships to support a student's enrollment in courses offered by accredited educational institutions. Scholarship awards will take the form of cash to be paid toward tuition and any combination of education-related expenses such as course-related fees, books, room and board, and supplies. Scholars who take this path may use the grant funds at any educational level, from grade school through graduate degree programs.
- Section 4945(g)(3) grants to support students who wish to spend a summer, or evenings or weekends during the academic year, to improve or enhance a specific talent or skill. You will require the student to report upon completion of the program, regarding mastery, proficiency, or progress in the desired area of expertise. For example, a student who takes summer dance classes might be required to share a video of the final recital program, or a student who takes a summer foreign language class might be required to produce a certificate of achievement.

In early Spring, information about B, including a link to the application, will be shared via C's e-newsletter and posted on C's intranet web portal, which is accessible to all employees of C. Applicants will have six to eight weeks to prepare and submit their applications. Announcements will clearly state that you are the entity funding B.

You will announce awards at a specified time each year in time to support summer programs, likely in May or June. The specific number of grants awarded in each category, Section 4945(g)(1) and 4945(g)(3), will be determined year by year based on the applications received, the number of qualified applicants, available funding, and in



accordance with the selectivity requirements of Revenue Procedure 76-47. The selected Scholars will be the two to five entries that receive the highest scores each year. The specific amounts awarded to each Scholar will vary.

Eligible candidates for awards must be:

- U.S. citizens, permanent residents, or visa holders; and
- Employees of C or dependent children of C employees.

Applicants must:

- Submit a completed application;
- Agree to all legal terms and conditions of B;
- Be eligible to legally receive grant funding; and
- Provide any references, letters of recommendation, work history, and any other documentation you request to determine eligibility.

Grant selection criteria will be based on financial need, academic merit, demonstrated leadership potential, and extracurricular activities. Each applicant will receive a score based on these components. The weighting of the criteria will emphasize financial need, academic merit, test scores, community involvement, work experience, leadership ability, community involvement, and recommendations of a peer or supervisor. Only one application may be submitted per family. Other criteria, as you may from time to time determine, may also be used to decide among students who have demonstrated financial need.

In the case of Section 4945(g)(1) grants, you will remit the grants directly to the educational institutions where Scholars enroll, subject to additional safeguards to prevent diversion of funds. In the case of Section 4945(g)(3) grants, where possible, you will pay the fees directly to the program or instructor (e.g. for dance or language courses, directly to the organization or instructor).

You will retain outside legal counsel or another independent organization ("Scholarship Consultant") to assist in administering B. Such assistance will include, but will not be limited to, screening applicants and selecting recipients of awards, and addressing any other program-related needs at your request. The Scholarship Consultant will be a separate corporate entity that is completely unrelated to you, and any fees paid for services provided will be set in accordance with standard rates for similar services provided to other client organizations.

The following persons are ineligible to receive a grant under B:

- a) Your current and former full-time employees, officers, or agents;
- b) Any members of the immediate families (parent, child, sibling, and spouse of each) and living in the same households as the persons listed in (a);



- c) Individuals who are employees, officers, and agents of the Scholarship Consultant or who are otherwise part of the selection committee for the award; and
- d) Any members of the immediate families (parent, child, sibling, and spouse of each) and living in the same households as the judges or members of the selection committee.

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 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 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 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 Section 117(a) and is to be used for study at an educational organization described in Section 170(b)(1)(A)(ii); or
  - A prize or award subject to the provisions of Section 74(b), if the recipient of the prize or award is selected from the general public; or
  - To achieve a specific objective; produce a report or similar product; or improve or enhance a literary, artistic, musical, scientific, teaching, or other similar skill or talent of the recipient.

To receive approval of its educational grant procedures, Treasury Regulations Section 53.4945-4(c)(1) requires that a private foundation show:

- The grant procedure includes an objective and nondiscriminatory selection process.
- The grant procedure results in the recipients performing the activities the grants were intended to finance.
- The foundation plans to obtain reports to determine whether the recipients have performed the activities that the grants were intended to finance.



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 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, or
- The relevant facts and circumstances 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.

Revenue Procedure 80-39, 1980-2 C.B. 772, provides similar guidelines for Section 4945(g)(3) programs.

You represented that your procedures for awarding grants under this program will meet the requirements of Revenue Procedure 76-47 (for the Section 4945(g)(1) grants), and Revenue Procedure 80-39 (for the Section 4945(g)(3) grants). 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 such as the applicant's financial need and overall merit of the application.
- You will not limit the recipient to a course of study that would particularly benefit you or the employer.

At no point will B be presented, in form or in substance, as a recruiting tool, inducement, or as a compensatory employee benefit.



**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 (or sections 4.03 through 4.09 of Revenue Procedure 80-39), and either the applicable percentage tests described in section 4.08 of Revenue Procedure 76-47 (or either of the percentage tests of section 4.10 of Revenue Procedure 80-39), 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.

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