

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

Department of the Treasury

Release Number: **202010005**
Release Date: 3/6/2020
Date: December 12, 2019

Employer Identification Number:

Contact person - ID number:

Contact telephone number:

LEGEND

UIL: 4945.04-04

T = Number
U = City, State
V = Scholarship
W = Scholarship
X = Company
y dollars = Amount
z dollars = Amount

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 both scholarships and 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 both scholarships and 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 a scholarship program called V and an employer-related scholarship program called W. The purpose for both W and V is to provide academic scholarships for graduating seniors who will attend a college, university, or

trade school. The number of scholarships is determined based on the available funds and determined prior to sending out announcements or applications.

V is available to graduating seniors in the U area that will be attending a college, university, or trade school. The recipients are nominated by their high school principal or counselor. Each recipient of this scholarship is eligible for y dollars. Information regarding this scholarship is mailed to area high school principals.

The purpose of W is to provide scholarships to children of full-time employees of X that are graduating from high school and will be attending a college, university, or trade school. These scholarships will be awarded annually and only available to graduating seniors that are a son or daughter of a full-time employee of X. The amount of W is z dollars. Notices regarding this scholarship are posted in the office and listed on the employee website portal. To apply for the scholarship, applications along with a transcript and photo identification, should be mailed to X by the deadline listed on the application.

The criteria for both V and W includes GPA, academic standing and achievement, involvement in extra-curricular activities, community involvement, and a written essay.

Your selection committee for V and W are faculty members from area colleges. You review the applications for completeness. Completed applications are then placed into a pool of applicants without prejudice and reviewed by the selection committee. Scholarship recipients are chosen by the committee members, who have no knowledge of the employee name or position held. The selection committee is solely responsible for evaluating the applications and selecting the recipients. None of your employees, your substantial contributors, your creator, any family members of your contributors, creators, or employees, X, its owners, employees, or family members of employees or owners are eligible to serve or otherwise influence the decision of the committee members.

Scholarship funds are given directly to the school prior to the beginning of their first fall semester. If the student is not enrolled at the college, university, or trade school, the money is returned to you. Your scholarships are not renewable as they are only open to graduating high school seniors.

X has over T locations across the country and is unable to estimate how many employees have graduating seniors that plan on attending a college, university, or trade school. There are no requirements for the degree received and there are no ties to future employment with you. You said that based on the number of employees of X and the ages of those employees, it is reasonable to assume the charitable class is sufficiently large and open-ended.

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. However, you 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 the taxpayer's grant program satisfied the "facts and circumstances" test. The primary purpose of your scholarship program, W, is to educate recipients in their individual capacities, and not to provide extra compensation or other employment incentives to employees of X. The following facts support you meeting the "facts and circumstances" test:

- (i) Independence of the Selection Committee: You have retained the services of a local university, an entirely independent party, 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 the recipients are enrolled, or are planning to enroll, in a college, university, or trade school.
- (iii) Objective Selection Criteria: Recipients for scholarships will be selected based on objective criteria, such as consideration of academic performance, participation in school and community activities, and a written essay.
- (iv) Eligible Dependents: 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 his or her parent was employed by X.
- (v) Size and Number of Scholarships: You plan to offer a small number of scholarships. This small amount is unlikely to be seen as incentive compensation for the employees of X.

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 grants 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 X.
- You will not limit the recipient to a course of study that would particularly benefit you or the employer.
- The number of associates whose children will be eligible to apply for scholarships is sufficiently large and open-ended so as to constitute a "charitable class."

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.

Please keep a copy of this letter in your records.

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

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