

S/W 4945.00-00
Internal Revenue Service

Department of the Treasury

Washington, DC 20224

Contact Person:

Telephone Number:

In Reference to:

Date:

JAN 14 1999

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Legend:

B=
C=
D=
F=
G=
H=
I=

Dear Sir or Madam:

This is in reference to your letter of October 26, 1998, requesting advance approval of your amended grant procedures.

We originally approved your grant procedures in a letter dated August 10, 1995.

Under your amended grant-making procedures, your current scholarship program will be separated into two distinct programs: one for children of the employees of B and its wholly owned subsidiaries who work at locations within H (the "C" program); and one for children of the employees of B and its wholly owned subsidiaries who work at locations within I (the "D" program).

Children of active full-time employees of B and its wholly owned subsidiaries who are employed at locations within H are eligible to participate in the C program.

An applicant must be a secondary school senior graduating during the current academic year and entering college in the summer or fall of the following year, or a freshman, sophomore or junior in good standing at an accredited four-year college or university. Persons who are winners are not eligible to reapply during subsequent years. Winners may hold other scholarships including appointments to G. The number of grants awarded under the C program in any year will not exceed 25 percent of the number of employees' children who (1) are eligible, (2) are applicants for such grants, and (3) are considered by the

33

199914056

-2-

selection committee in selecting the recipients of grants in that year.

Successful applicants will be selected by F, or such other outside independent nonprofit educational organization as selected by you. F (or such other independent selection organization) will evaluate applicants based on overall academic records, extracurricular activities, test scores and outstanding talents and achievements. F will prepare a prioritized list of selected participants each year and you will award, in order of priority, scholarships to selected participants up to the maximum number of scholarships.

The scholarship award will consist of a one-time grant of \$7,500. Checks will be payable to the student. The grant is payable upon receipt of the winner's verification of registration at an accredited college or university and a signed letter of intent prior to the start of the school year.

While F will be responsible for the general administration of the C program, you will monitor all reports from F and other aspects of the program to assure compliance with the program's purpose and procedures. Grants are not subject to termination as a result of the termination of a parent's employment with B. There is no commitment, intention or requirement to induce scholarship recipients to apply for employment with you or B and recipients are free to choose their own course of study without influence from you or B.

Children of active full-time employees of B and its wholly owned subsidiaries who are employed at locations within I are eligible to participate in the D program.

An applicant must be a secondary school senior graduating during the current academic year and entering college in the summer or fall of the following academic year, or a freshman, sophomore or junior in good standing at an accredited four-year college or university. Persons who are winners are not eligible to reapply during subsequent years. Winners may hold other scholarships. The number of grants awarded under the D program in any year will not exceed 25 percent of the number of employees' children who (1) are eligible, (2) are applicants for such grants, and (3) are considered by the selection committee in selecting the recipients of grants in that year.

Successful applicants will be selected by F, or such other outside independent nonprofit educational organization as selected by you. F (or such other independent selection organization) will evaluate applicants based on overall academic

33

records, extracurricular activities, test scores and outstanding talents and achievements. F will prepare a prioritized list of selected participants each year up to the maximum number of scholarships.

The scholarship award will consist of a one-time grant of \$2,000. The scholarship will be issued on the student's behalf to the college or university at which the student is registered to attend. No scholarship will be issued, however, until F or you have received verification that the student is registered at an accredited college or university.

While F will be responsible for the general administration of the D program, you will monitor all reports from F and other aspects of the program to assure compliance with the program's purpose and procedures. Grants are not subject to termination as a result of the termination of a parent's employment with B. There is no commitment, intention or requirement to induce scholarship recipients to apply for employment with you or B and recipients are free to choose their own course of study without influence from you or B.

In both the C and D programs scholarships will not be used as a means of inducement to recruit employees for B nor will a grant be terminated if the employee leaves the company. Scholarships will only be awarded to students that plan to enroll in an institution that meets the requirements of section 170(b)(1)(A)(ii) of the Code. The recipient will not be restricted in his/her course of study. F will supply statistical information on applications received and grants made, which will enable you to maintain the records required by Rev. Proc. 76-47, 1976-2 C.B. 670. You will ensure compliance with the percentage tests under section 4.08 of Rev. Proc. 76-47 in the aggregate with respect to your other scholarship programs available to the same individuals.

Section 4945 of the Code provides for the imposition of taxes on each taxable expenditure of a private foundation.

Section 4945(d)(3) of the Code provides that the term "taxable expenditure" means any amount paid or incurred by a private foundation as a grant to an individual for travel, study, or other similar purposes by such individual, unless such grant satisfies the requirements of section 4945(g).

Section 4945(g)(1) of the Code provides that section 4945(d)(3) shall not apply to an individual grant awarded on an objective and nondiscriminatory basis pursuant to a procedure approved in advance by the Secretary, if it is demonstrated to

199911056

-4-

the satisfaction of the Secretary that the grant constitutes a scholarship or fellowship grant which is subject to the provisions of section 117(a) and is to be used for study at an educational institution described in section 170(b)(1)(A)(ii) of the Code.

Rev. Proc. 76-47, 1976-2 C.B. 670, sets forth guidelines for a private foundation conducting an employer related grant program to obtain advance approval of its procedures for conducting such a program under section 4945(g) of the Code. Sections 4.01 through 4.07 set forth seven conditions which a private foundation must meet in order to obtain advance approval of its procedures under section 4945(g) of the Code. Section 4.08 provides that a private foundation which makes scholarship awards to children of employees of a company, or to the employees themselves will meet this test if it limits these grants to 25% of all eligible applicants or 10% of all those shown to be eligible in any given year. Renewals of grants awarded in prior years will not be considered in determining the number of grants awarded in a current year.

The information provided indicates that your amended scholarship program and the procedures under which it is conducted will not differ materially from your original program, approved in the letter dated August 10, 1995.

Therefore, based upon the information submitted, and assuming your amended program will be conducted as proposed, with a view to providing objectivity and nondiscrimination in the awarding of scholarship grants, we rule that your C and D programs for the awarding of scholarship grants comply with the requirements of section 4945(g)(1) of the Code. Thus, expenditures made in accordance with these procedures will not constitute "taxable expenditures" within the meaning of section 4945(d)(3) of the Code, and as such are eligible for the exclusion from income provided for in section 117(a) of the Code to the extent that such grants are actually used for qualified tuition and related expenses within the meaning of section 117(b)(2) of the Code.

This ruling is conditioned on the understanding that there will be no material changes in the facts upon which it is based. It is further conditioned on the understanding that no grants will be awarded to creators, officers, directors, trustees, or members of the selection committee, or for a purpose inconsistent with the purposes described in section 170(c)(2)(B) of the Code.

Please note that this ruling is only applicable to grants awarded under your scholarship program as outlined above. Before

23

199914056

-5-

you enter into any other scholarship programs you should submit a request for advance approval of that program.

We are informing your key District Director of this action. Please keep a copy of this ruling with your organization's permanent records.

This ruling is directed only to the organization that requested it. Section 6110(j)(3) of the Code provides that it may not be used or cited as precedent.

Sincerely yours,

Gerald V. Sack

Gerald V. Sack
Chief, Exempt Organizations
Technical Branch 4