

Internal Revenue Service

memorandum

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07.23

to: Manager, EO Technical Guidance & Quality Assurance T:EO:RA:G
Attn: Charles Barrett

from: Chief, Branch 5 CC:ITA:Br05
Associate Chief Counsel (Income Tax & Accounting)
Attn: Michael Schmit



subject: [REDACTED]

This is in response to your July 17, 2003, request for technical assistance in the above matter. Because it contained matters within our jurisdiction, your request was forwarded to this office for response by the Division Counsel/Associate Chief Counsel (TE/GE).

The information submitted indicates that the [REDACTED] (hereinafter "Foundation") is an organization recognized as exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code, and is a private foundation within the meaning of section 509(a). The Foundation previously received advance approval of its procedures for awarding scholarship grants to individuals under section 4945(g)(1), but would now like to expand upon the permissible use of such grants.

Under its current procedures, the Foundation awards college-level scholarship grants to outstanding students for science, math, and technology studies. Amounts are generally limited to "qualified tuition and related expenses," and are paid directly to the educational institution attended by the recipient.

The Foundation now proposes to pay to or for the benefit of students receiving such qualified scholarships, additional amounts to cover expenses for (a) room and board, and (b) research activities, as further described below. The Foundation is aware that, under current law, the amount of a student's scholarship or fellowship receipts exceeding the amount of his or her total qualified tuition and related expenses is generally includible in the recipient's gross income for federal income tax purposes, and intends to advise its grant recipients to this effect.

In addition to the room and board payments, the Foundation would like to be able to pay the educational institutions attended by its scholarship recipients funds to cover costs associated with the student's participation in supplemental scientific or mathematical research activities that may go beyond the student's regular courses of curriculum. By reimbursing educational institutions agreeable to the Foundation's proposal for the use of their equipment and facilities, the Foundation hopes to avoid

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problems associated with ownership, patent, royalty, and exploitation rights which an institution might assert by reason of its sponsorship or "deemed funding" of such research activities. The Foundation would disperse such amounts to an agreeable college or university to defray the costs of the deemed university funding, thereby preserving the student's ownership rights in any research results.

The Foundation has requested that its new proposal and procedures be approved under section 4945(g)(1) of the Code, or, in the alternative, under section 4945(g)(3). Additionally, the Foundation would like approval to apply the new procedures to scholarship grants already awarded.

Sections 4945(a) and (b) of the Code impose certain excise taxes on the "taxable expenditures" of private foundations. Section 4945(d)(3) defines taxable expenditures as including any grant to an individual for travel, study, or other similar purpose, unless the grant satisfies the requirements of subsection 4945(g). Section 4945(g) provides that subsection 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 the satisfaction of the Secretary that - (1) the grant constitutes a scholarship or fellowship grant that would be subject to the provisions of section 117(a) (as in effect on the day before the date of the enactment of the Tax Reform Act of 1986) and is to be used for study at an educational organization described in section 170(b)(1)(A)(ii).

Section 117(a), as then in effect, provided generally that, in the case of an individual, gross income did not include - (1) any amount received - (A) as a scholarship at an educational organization described in section 170(b)(1)(A)(ii), or (B) as a fellowship grant, including the value of contributed services and accommodations; and (2) any amount received to cover expenses for - (A) travel, (B) research, (C) clerical help, or (D) equipment, which are incident to such a scholarship or to a fellowship grant, but only to the extent the amount is so expended by the recipient.

Regulations under section 1.117-1(b) provide that the requirement that the expenses referred to in section 117(a)(2), above, be incident to the scholarship or the fellowship grant means that the expenses of travel, research, clerical help, or equipment must be incurred by the individual in order to effectuate the purpose for which the scholarship or the fellowship grant was awarded.

Regulations under section 1.117-3 define a scholarship or a fellowship grant as including the value of contributed services and accommodations, and the amount of tuition, matriculation, and other fees which are furnished or remitted to a student to aid him or her in the pursuit of studies. "Contributed services and accommodations" are defined as including such services as room and board, laundry service, and similar services or accommodations which are received by an individual as part of a scholarship or fellowship grant.

In the present case, the amounts the Foundation proposes to award for room and board expenses are clearly within the definition of "contributed services and accommodations," and thus excludable "scholarships" under sections 1.117-3(a) and (d) (the law as then in effect).

The Foundation's proposed reimbursement of an academic institution's research costs and expenses also constitutes a scholarship or fellowship grant under section 1.117-3(a) (the law as then in effect). However, these defrayed university expenses are neither "contributed services and accommodations" nor "amounts received to cover incidental research expenses," but rather constitute "amount(s) of tuition, matriculation, and other fees" which are furnished or remitted to a student to aid in the pursuit of studies, within the contemplation of section 1.117-3(a) of the regulations. This matter is addressed in Rev. Rul. 67-85, 1967-1 C.B. 25, where an amount made available to an educational organization by the grantor of a fellowship award for expenses incurred in the training of an award recipient was determined to be in the nature of tuition, and, as such, a part of the recipient's fellowship award. In that case, the grantor of a fellowship award to a non-degree candidate made an additional amount available to the educational organization primarily to defray the expenses involved in training the fellowship recipient. The revenue ruling concludes that such a payment would appear to be in the nature of tuition, and thus a part of the scholarship or fellowship grant within the meaning of section 1.117-3 of the regulations. See, also, Rev. Rul. 71-344, 1971-2 C.B. 94, distinguishing such expenses from section 117(a)(2) "incidental" research and other expenses incurred by a fellowship recipient.

Thus, we conclude that the Foundation's proposed grants would constitute scholarship or fellowship grants which would be subject to the provisions of section 117(a) as in effect on the day before the date of the enactment of the Tax Reform Act of 1986, within the contemplation of section 4945(g)(1) of the Code. Accordingly, it is unnecessary to consider the possible application of section 4945(g)(3) to the program. Whether or not advance approval may be extended to scholarship grants already awarded by the Foundation is a matter within your jurisdiction.

Thank you for soliciting our views in this matter. If additional assistance or information is needed, please call Michael Schmit of this office, at 622-6818.

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