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DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

SIN - 4945.04-04
No Third Party Contacts

NOV 12 1999

Employer Identification Number:

Legend:

X =
Y =

A =

Dear Sir or Madam:

This refers to your letter dated September 9, 1999, requesting advance approval of your scholarship grant procedures under section 4945(g) of the Internal Revenue Code (the Code).

The information submitted indicates that you are exempt under section 501(c)(3) of the Code and a private non-operating foundation within the meaning of section 509(a). Since formation your principal activity has been the distribution of assets to other organizations to which contributions are deductible under section 170(c)(1) or 170(c)(2) of the Code. You desire to maintain your current activity and add a scholarship program.

The scholarship program is for one scholarship grant for undergraduate, graduate or professional school study to any accredited college or university in the United States. The amount of grant will be the lower of actual tuition costs or $10,000 annually payable to the college or university of the applicant's choice. The scholarship is available to any descendants of any employee of X, provided the employee has been employed for more than one year and works at least 30 hours per week. The scholarship is not available to any members of the A family or the descendants of directors or officers of X.

The scholarship will be awarded based on criteria that include academic merit, potential for future academic excellence, leadership qualifies, community service, and meaningful extracurricular activities. No consideration will be given to the employee's position, services, or duties.

The scholarship will be announced in newsletters, bulletin boards, and other promotional literature. Applications for scholarships must be received postmarked on or before January 2. The applications are evaluated and ranked by a selection committee made up of three individuals from three different universities who are independent from you, X, or the A family. Their evaluation and ranking are then sent to Y, an independent party, who will determine the highest rank applicant.

Once awarded, a scholarship will not be terminated because the recipient's relative terminates employment with X. The renewal of the scholarship will not be denied if the recipient's relative terminates employment with X.

You will exercise the right to receive a report of the recipient's courses taken and grades received in each academic period as verified by the educational institution attended by the recipient. You may not obtain such reports under the following conditions: the scholarship is subject to the provisions of section 117 of the Code, grant funds are payable to an educational institution, and the educational institution agrees to use the grant funds to defray the recipient's expense at the educational institution only if the recipient's standing at the educational institution is consistent with the purposes and conditions of the grant. You will also investigate reports of any improper use of grant funds and take necessary steps to recover or restore grant funds for intended purposes.

The scholarship will not be used to recruit employees, induce employees to continue their employment or to compel employees to follow any course of action sought by X. Further, the number of scholarships awarded in any year will not exceed 25% of the number of X employees' descendants who were eligible applicants considered by the selection committee, or 10% of the number of X employees' descendants who could be shown eligible for grants (whether or not they submitted an application).

Section 4945(a)(1) of the Code imposes a tax on each taxable expenditure of a private foundation as defined in section 4945(d).

Section 4945(d)(3) provides that a taxable expenditure includes 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 the grant satisfies the requirements of

subsection (g).

Section 4945(g)(1) provides that subsection (d)(3) shall not apply to an individual grant awarded on an objective and nondiscriminatory basis, if it is demonstrated to the satisfaction of the Secretary or his delegate 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).

Rev. Proc. 76-47, 1976-2 C.B. 670, sets forth guidelines to determine whether a grant made by a private foundation under an employer-related grant program to an employee or to a child of an employee of the particular employer to which the program relates is a scholarship or fellowship grant subject to the provisions of Code section 117(a). A program that satisfies the seven conditions set forth in sections 4.01 through 4.07 and meets the percentage test described in section 4.08 will be assumed to be providing scholarships or fellowship grants subject to the provisions of section 117(a) of the Code.

The seven conditions set forth in sections 4.01 through 4.07 are as follows: no inducement for employment; selection by a committee totally independent of the private foundation, its organizers, and the employer concerned: eligibility requirements of meeting the minimum standards for admission and attendance to an educational institution; selection based solely upon substantial objective standards that are completely unrelated to employment; no termination, or ineligibility for renewal, of a grant on the basis of termination of employment; a recipient's free choice in the pursuit of a course of study that is not of particular benefit to the employer; and enabling the recipients to obtain education in their personal capacities and solely for their personal benefit with no commitments, understandings or obligations to benefit the employer or foundation.

Section 4.08 provides that a private foundation giving scholarship awards to children of employees of a related company must agree to limit these grants to 25 percent of all eligible applicants or 10 percent of all those known to be eligible in any given year.

Accordingly, based upon the information presented, and assuming your scholarship program will be conducted as proposed, with a view to providing objectivity and non-discrimination in the awarding of scholarship grants, including meeting the requirements of Rev. Proc. 76-47, we rule that your grant procedures for the awarding of scholarship grants to descendants of employees of X comply with the requirements of section 4945(g)(1) of the Code. Thus, grants made in accordance with those procedures will not constitute taxable expenditures within the meaning of section 4945(d)(3) of the Code.

The recipient of the scholarship shall be responsible for determining whether all or part of the scholarship is includible in gross income under section 117 of the Code. You should advise the recipient that amounts granted are taxable income if the aggregate scholarship amounts received by the recipient exceed tuition and fees (not including room and board) required for enrollment or attendance at the educational institution and fees, books, supplies, and equipment required for courses of instruction.

This ruling will remain in effect as long as the procedures in awarding grants under your program remain in compliance with sections 4.01 through 4.08 of Rev. Proc. 76-47. Please note that this ruling is only applicable to grants awarded under the described program. Before you enter into any other scholarship or educational loan program you should submit a request for advance approval of that program.

We are informing the key district office of this ruling. 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(k)(3) of the Code provides that it may not be used or cited as precedent.

Sincerely,

(signed) Robert C Harper, Jr.

Robert C. Harper, Jr.
50-03055
Chief, Exempt Organizations
Technical Branch 3