SIN: 4945.00-00

Internal Revenue Service

Department of the Treasury

Washington, DC 20224

199906056

Contact Person:

Telephone Number:

In Reference to:

Date:

NOV 19 1998

Legend:

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Dear Sir or Madam:

This is in reference to your letter of July 7, 1998, requesting advance approval of your grant-making procedures under section 4945(g)(1) of the Internal Revenue Code.

In a letter dated June 25, 1996, you were granted recognition of exemption under section 501(c)(3) of the Code.

The purpose of your scholarship program is to further the education of the children whose parents are employees of B. Your program will make limited scholarship grants each year to one or more high school, college or graduate school students to assist the recipient to complete an undergraduate or graduate education at a college, graduate school or other educational institution of his or her choice. Scholarship recipients will not be chosen from any particular high school, college or graduate school or from any particular locality. The basic criterion for selection will be superior academic achievement in high school or college. Additional criteria will be financial need, demonstrated achievement of goals, and motivation.

Your Board of Directors will select the scholarship recipients from among students who submit applications. Each scholarship will be paid by you directly to the educational institution for the use of the scholarship recipient. Scholarships are required to be awarded on an objective and nondiscriminatory basis without regard to race, color, age, religion or sex of the applicant. An award may not be terminated because the parent is no longer employed by B. Renewal grants are based solely upon nonemployment related factors.

Once a grantee is selected, he or she will be required to furnish a report of courses taken and the grades received in each

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academic period. Such report must be verified by the educational institution attended by the grantee and must be obtained at least once a year.

If you learn that all or any part of grant is not being used to further the purposes of the grant, you will take all reasonable and appropriate steps to recover the grant funds and/or ensure restoration of the directed funds to the purposes of the grant. If such a diversion occurs and the grantee has not previously diverted grant funds to any use that does not further the purposes of the grant, you will withhold any further payments to the grantee until you receive the grantee's assurance that future diversions will not occur and will require the grantee to take extraordinary precautions to prevent future diversions from occurring. You will retain records pertaining to each scholarship grant.

You have submitted statements indicating that you will comply with the requirements of section 4.01-4.08 of Rev. Proc. 76-47.

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 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 to be used in determining whether a grant made by a private foundation under an employer-related program to a child of an employee of the particular employer to which the program relates is a scholarship grant subject to the provisions of section 117(a). If a private foundation's program satisfies the seven conditions set forth in sections 4.01 through 4.07 of Rev. Proc. 76-47 and meets the percentage test described in section 4.08,

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the Service will assume the grant will be subject to the provisions of section 117(a).

Section 4.08 of Rev. Proc. 76-47 provides a percentage test guideline. It states that in the case of a program that awards grants to children of employees of a particular employer, the program meets the percentage test if the number of grants awarded under that program in any year to such children does not exceed 25 percent of the number of employees' children who (i) were eligible, (ii) were applicants for such grants, and (iii) were considered by the selection committee in selecting the recipients of grants in that year, or 10 percent of the number of employees' children who can be shown to be eligible for grants (whether or not they submitted an application) in that year.

You will maintain statistical information on applications received and grants made which will enable you to maintain the records required by Rev. Proc. 76-47. You have agreed that your scholarship program will meet the requirements of Rev. Proc. 76-47, including compliance with the 25 percent of eligible applicants test or the 10 percent of eligibles test. If you chose to meet the 10 percent test, you must conduct a survey showing that there are 10 actual eligibles for each scholarship you award.

Accordingly, based upon the information submitted, and assuming your program will be conducted as proposed, with a view to providing objectivity and nondiscrimination in the awarding of scholarship grants, we rule that your procedures for the awarding of scholarship grants to the children of the employees of B 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.

The recipient of the scholarship is responsible for determining whether all or part of the scholarship is includible in gross income under section 117 of the Code. We understand that you will 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 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 premise 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.

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 your program as outlined above. Before you enter into any other scholarship programs you should submit a request for advance approval of that program. In addition, if you enter into any other scholarship program, covering the same individuals, the percentage test of Rev. Proc. 76-47 must be met in the aggregate.

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

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