SIN: 4945.00-00

**Internal Revenue Service**

Department of the Treasury

200038056

Washington, DC 20224

Contact Person:

Telephone Number:

In Reference to:

Date: JUN 28 2000

OP:E:EO:T4

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Dear Sir or Madam:

This is in reference to your letter of March 1, 2000, requesting advance approval of your grant procedures under section 4945(g) of the Internal Revenue Code.

The information submitted shows that the grants will be administered by F, a publicly supported organization, under its B program. F selects individual scholarship recipients through its C competition. The initial phase of the competition is the X Test, which is given annually in participating high schools by high school officials. After the test, F identifies and honors students scoring in a group that represents the top two percent of graduating high school seniors, and designates a number that represents less than one percent of the graduating high school seniors in each state as semifinalists. The semifinalists then take a second test to "confirm" their earlier performance. Those who repeat their performance, who demonstrate high academic standing in high school and who meet other standard requirements are designated as finalists.

You have entered into an agreement with F whereby you have agreed to sponsor a specific number of scholarships each year, to be awarded to children of employees of D. Under the B program, F may award "special scholarships" to high-scoring students below the finalist level, if there are an insufficient number of finalists.

The selection of individual grant recipients is made by selection committees designated by F. The members of the

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selection committee are totally independent and separate from you. F confirms the individual scholarship recipient's enrollment at the educational institution, makes payment of the award through the appropriate financial aid office of the educational institution, and supervises and investigates the use of the grant funds by the recipients in their educational program.

The scholarships will not be used as a means of inducement to recruit employees nor will a grant be terminated if an employee leaves the company. Scholarships will only be awarded to students who plan to enroll in an institution that meets the requirements of section 170(b)(1)(A)(ii) of the Code and which may be further limited by F. The recipient will not be restricted in his/her course of study.

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 organization described in section 170(b)(1)(A)(ii).

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, 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

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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.

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. You have agreed that your scholarship program will meet the requirements of Rev. Proc. 76-47, and that special scholarship awards will be in compliance with either the 25 or 10 percent test of section 4.08 applicable to a program that awards grants to children of employees of a particular employer.

If you wish to meet the 10 percent test, "eligible" employees' children shall include all employees' children who take the required tests in the applicable year and otherwise meet the minimum requirements for eligibility established by you. In addition, if you wish to meet the 10 percent test you must obtain an actual count to show the number of employees' children who are eligible for grants, whether or not they submitted an application in the applicable year.

Accordingly, based upon the information presented, and assuming the program will be conducted as proposed, with a view to providing objectivity and non-discrimination in the awarding of scholarship grants, we rule that your grants to F for the awarding of scholarship grants to children of employees of D comply with the requirements of section 4945(g)(1) of the Code. Thus, such expenditures 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 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 F 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 based on the understanding that there will be no material change in the facts upon which it is based and that no grants will be awarded to relatives of members of selection committees, or for a purpose inconsistent with the purposes

described in section 170(c)(2)(B) of the Code. Any changes in the procedure must be reported to your office for exempt organization matters.

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. Records should be maintained to show that you meet the applicable percentage test of section 4.08 thereof.

Please note that this ruling is only applicable to grants awarded under the B program. Before you enter into any other scholarship or educational loan program you should submit a request for advance approval of that program, and the requirements of Rev. Proc. 76-47 must be met in the aggregate. Your procedures for awarding scholarships to students designated as finalists under the C program are considered to satisfy the facts and circumstances test of Rev. Proc. 76-47 and, therefore, only those scholarships offered to individuals below the finalist level under your B will be counted in determining whether the percentage test of Rev. Proc. 76-47 is met with respect to special scholarship awards made under the B program and any scholarship awards made under any other such program.

We are informing the Ohio TE/GE 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,

Gerald V. Sack

Gerald V. Sack
Manager, Exempt Organizations
Technical Group 4