I. CURRENT DEVELOPMENTS IN IRC 4945 – EDUCATIONAL GRANTS TO INDIVIDUALS

1. Introduction

The subject of educational grants awarded by private foundations to individuals is one that has received considerable attention in our CPE Program over the past several years. With the rising costs of education and research, the importance of scholarship funds has increased significantly. As this need for financial assistance becomes more acute, we encounter ongoing and novel questions in the taxable expenditure area especially involving educational grant programs restricted in some way to preferred beneficiaries. This article will focus on new developments and problems that have arisen over the past year. For a complete discussion of the history and general application of IRC 4945 as it relates to educational grants, reference is made to the 1980 Annual Technical Review Institute text, as well as the 1981 and 1982 CPE volumes.

2. Scholarships Restricted to Particular Groups

In recent years, the question of the validity of scholarships restricted to certain groups has received considerable attention. IRC 4945(g) requires that in order for a grant to be considered other than a taxable expenditure by a private foundation under IRC 4945(d)(3), it must be awarded on "an objective and nondiscriminatory basis." In the 1982 CPE text, the validity of scholarships restricted on the basis of race is considered at some length. In that article, the principle that racial discrimination in education is contrary to federal public policy is thoroughly presented.

As noted, the public policy against racial discrimination in education has become quite clear and all the more pervasive in the past decade. The Court in Green v. Connally, 330 F. Supp. 1150 (D.D.C. 1971), at 1163, states:

> We are persuaded that there is a declared Federal public policy against support for racial discrimination in education which overrides any assertion of value in practicing private racial discrimination, whether ascribed to philosophical pluralism or divine inspiration for racial segregation.

This federal policy against racial discrimination in education specifically encompasses scholarships and other financial assistance to students. For example, the HEW regulations implementing Title VI of the Civil Rights Act of 1964 prohibit direct or indirect racial discrimination in the provision of financial aid to individuals. 45 C.F.R. Section 80.3(b). In addition, the various federal programs providing scholarships and other forms of financial assistance to students pursuing further education or training nearly all refer back to these regulations and specifically prohibit discrimination on the basis of race.

However, on October 12, 1982, the Supreme Court heard oral arguments in Goldsboro Christian Schools and Bob Jones University on whether the Internal Revenue Service can deny charitable status, on public policy grounds, to racially discriminatory religious schools. William Bradford Reynolds, Assistant Attorney General for Civil Rights, presented the Federal Government's case in support of the schools, arguing that the legislative history of IRC 501(c)(3) did not support a broad common law definition of "charitable." If this position prevails, public policy considerations would not be a consideration in determining exemption qualification in the area of racial discrimination. For a fuller discussion of this subject, see the topic "Update on Private Schools."

Another aspect of this question is whether this policy against racial discrimination in education extends to discrimination based on ethnic origin or religious affiliation. For example, would a grant program, established pursuant to an individual's will, that based its selection on the ethnic background of the recipient run afoul of the federal public policy against racial discrimination? Rev. Proc. 75-50, 1975-2 C.B. 587, dealing with private schools states:

> The Service considers discrimination on the basis of race to include discrimination on the basis of color and national or ethnic origin.

No decision has yet extended the racial discrimination prohibition concerning scholarships to encompass ethnic origin or religious belief. The matter is now being considered by the office of the Chief Counsel and arguments have been presented on both sides.

One position is that although the Service has stated that this is its policy regarding schools, there is no clear indication that this definition was intended to be extended to organizations such as private scholarship trusts. We have seen a number of such trusts established for individuals of particular religious or ethnic

backgrounds, and it seems important to distinguish between a trust that limits its pool of eligible applicants to those of a particular national origin from one that refuses to consider applicants of a particular ethnic group. One excludes the majority to benefit a minority while the other singles out a minority ethnic group for inequitable treatment. The former trust could be considered inclusory while the latter trust may be discriminatory.

The other point of view holds that the requirement that the award be made on "an objective and nondiscriminatory basis," is absolute. Consequently, limitations on the eligible class based on anything other than objective criteria, such as financial need or scholastic ability, are discrimination of the type that federal public policy is designed to discourage.

3. Company Scholarship Questions

A. Satisfying the Facts and Circumstances Test of Rev. Proc. 76-47

1. Several situations are being considered in this area. In one, a private foundation was set up to award one grant per year to the children of employees of a company having 3,000 employees. The program met the guidelines of sections 4.01 through 4.07 of Rev. Proc. 76-47, 1976-2 C.B. 670; however, by awarding one grant per year, the foundation did not meet the percentage limitation guidelines of section 4.08. The foundation lacked sufficient data to meet the 10% test and failed to meet the 25% test in the last two out of three years because it had an insufficient number of grant applicants.

Section 4.08 of Rev. Proc. 76-47 states that a program will meet the percentage test if the number of grants awarded in any year (a) does not exceed 25% of the number of employees' children who:

1. were eligible;

2. were applicants; and

3. were considered by the selection committee in selecting recipients that year,

or (b) 10% of the number of employees' children who can be shown to be eligible, whether or not they submitted an application. If a program fails to satisfy either of these percentage tests, the grants may still qualify as scholarships under IRC

117(a) based on all the facts and circumstances of the particular case. The facts and circumstances will be considered in the context of the probability that a grant will be available to any eligible applicant. Among the relevant facts and circumstances to be considered are the likelihood that the program may be used to recruit or retain employees, the independence of the selection committee, the standards for eligibility and selection, the number of grants available, the number of employees' children who would be eligible, any restrictions on course of study, etc.

In this case, it appears that the grantees and applicants are not children of an identifiable subgroup of company employees. The grant does not significantly limit a grantee in choosing a course of study or a school. These facts combined with the existence of only one grant per year among the children of 3,000 employees seem to indicate that overall, there is no significant degree of probability that a grant will be available to any employee's child who is an eligible applicant. Thus, the grant's primary purpose can be seen to be the education of recipients in their individual capacities rather than a scheme to compensate employees. Although this situation involves only one grant per year among employees' children, it does not preclude the possibility that if more grants were awarded, there would still be no significant degree of probability that a grant would be available to any employee's child who is an eligible applicant.

Grants awarded in circumstances similar to this case, then, would constitute scholarships subject to the provisions of IRC 117(a) and would not be taxable expenditures under IRC 4945(d)(3) by reason of IRC 4945(g)(1).

2. In a ruling (Private Ruling Letter #8222063), a scholarship program was held to satisfy the facts and circumstances test of Rev. Proc. 76-47 based on the following factors and analysis. Certain private foundations entered into agreements with a corporation, recognized as a public charity under IRC 501(c)(3) and 509(a)(1), whose purpose is to select outstanding high school students as recipients of undergraduate scholarships. Competition for these scholarships is nationwide and "finalists" for the program are selected primarily by their achievement on two aptitude tests by scoring in the top two percent nationwide and being among the top one-half of one percent on a statewide basis, as well as a demonstrated high academic standard in high school.

By these agreements, the private foundations agreed to sponsor a specific number of scholarships each year to be awarded to children of employees of a particular employer. The corporation may award scholarships only to students who are designated as finalists and the actual number of scholarships to be supported by

any private foundation will not exceed the number of employees' children who qualify as finalists. After the national list of finalists is determined, the corporation reviews the finalist group to determine which students are eligible for grants under an employer related scholarship program. No application is required from the student and, therefore, neither the private foundation nor the corporation can determine the number of eligible applicants. The corporation monitors participating employers to ensure a sufficiently large base of employees' children from which at least one or more finalists would ordinarily be expected to emerge. This is necessary since, on an average, one scholarship is awarded for every 9,000 employees.

The selection of grant recipients is made by a committee designated by the corporation and it is totally independent of and unrelated to any of the private foundation sponsors. The corporation sees to all necessary follow-up action, such as confirming the recipient's enrollment in school, paying the award to the school, and supervising and investigating the use of the monies.

The scholarships are not used as a means of inducing or recruiting employees to work for a particular employer nor are they terminated if an employee leaves the company. The recipient is not restricted to a particular course of study.

Because of the unusual nature of the scholarship program, none of the private foundations could show evidence satisfying either the 25% or 10% tests of section 4.08. Thus, they could only satisfy this requirement of Rev. Proc. 76-47 by considering all the relevant facts and circumstances involved to determine whether the primary purpose of the program is to provide extra compensation or other employment incentive, or to educate recipients in their individual capacities. In this situation, the following facts were considered significant: no application was required; individuals must achieve finalist status in a highly selective academic competition; recipients are chosen by selection committees that are totally independent of the private foundation or the employer involved; the corporation determines the amount of the grant awarded to each finalist within predetermined limits; no limitations are placed on the course of study followed; and, the number of grants actually made may not exceed the number of employees' children who qualify as finalists.

Under the facts and circumstances described, it was determined that only an insignificant probability existed that an employee's child would be selected and, consequently, the grant's primary purpose is not one of providing extra

compensation or other employment incentive, and the facts and circumstances test of section 4 of Rev. Proc. 76-47, was met.

B. The 10% Test of Rev. Proc. 76-47 and Rev. Proc. 80-39

Recently, further consideration was given to the problem of how a private foundation that provides an employer-related scholarship or educational loan program can meet the 10% test of Rev. Proc. 76-47 and Rev. Proc. 80-39. As stated above, section 4.08 of Rev. Proc. 76-47 provides that a program awarding grants to children of employees will meet the percentage test if the number of grants awarded in any year does not exceed 10% 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. An employee's child is considered eligible only if the child meets all the eligibility requirements imposed by the program and the program requirements themselves satisfy section 4.03 of the Revenue Procedure regarding minimum eligibility requirements. No persons are considered eligible if they would not reasonably be expected to attend an educational institution as defined in IRC 170(b)(1)(A)(ii).

Rev. Proc. 80-39, 1980-2 C.B. 772, provides essentially the same requirements and guidelines for determining whether educational loans made by a private foundation under an employer-related loan program are taxable expenditures under IRC 4945.

The application of the 10% test depends, then, on whether the private foundation can determine how many employees' children are eligible because the number of applications the private foundation receives is not determinative. How to make this determination has always been a problem and neither revenue procedure has provided any clear means of doing it.

The Service will consider use of the following method: a private foundation may include as eligible only those children who can be shown, such as by written statement obtained through a survey or other format, that (1) they meet the foundation's eligibility requirements; and, (2) they are enrolled in or have completed a course of study preparing them for admission to an educational institution at the level for which the scholarships or loans are available, have applied or intend to apply to such an institution, and expect, if accepted, to attend such an educational institution in the immediately following academic year; or (3) they currently attend an educational institution for which the scholarships or loans are available but are not in the final year for which an award may be made.

C. Other Employer Preference Programs

1. Several situations have arisen recently illustrating some interesting variations on the typical employer-related educational grant program. In one, a private foundation exempt under IRC 501(c)(3) provided educational grants to employees of the public library system of a particular city. The grants were for one year of graduate study in library administration and were conditioned upon the employee's returning to work for that library system. The questions presented were whether these grants were taxable expenditures and whether they were scholarships or fellowships under IRC 117 and 4945(g)(1).

IRC 4945(d)(3) 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, unless the grant satisfies the requirements of IRC 4945(g). IRC 4945(g)(1) provides that certain scholarships qualified under IRC 117 may receive advance approval and escape classification as a taxable expenditure under IRC 4945(d)(3). However, Reg. 1.117-4(c) states, in part, that amounts representing compensation for past, present or future employment services are not considered scholarships.

IRC 4945(g)(3) provides that IRC4945(d)(3) will not apply to an individual grant the purpose of which is to achieve a specific objective, produce a report, improve or enhance a literary, artistic, musical, scientific, teaching or other similar skill, capacity or talent of the recipient. Reg. 53.4945-4(b)(1)(i) provides that in order for a foundation to establish that its grants to individuals are made on an objective and nondiscriminatory basis, the grants must be awarded in accordance with a program that, if it were a substantial part of the foundation's activities, would be consistent with the existence of the foundation's exempt status as an organization described in IRC 501(c)(3).

Rev. Rul. 77-44, 1977-1 C.B. 355, holds that grants made on an objective and nondiscriminatory basis by a private foundation to worthy college students who acknowledge that they plan to teach in a particular state upon graduation, satisfy the requirements of IRC 4945(g)(3) and, therefore, are not taxable expenditures under IRC 4945(d)(3). However, the grants do not constitute scholarships described in IRC 4945(g)(1) and 117(a) because the grantor foundation expects to receive a substantial service from the recipients in return for the grants.

In determining that the grants in this case were not taxable expenditures but were also not scholarship grants under IRC 117(a) and 4945(g)(1), discussion centered on the fact that the grantor private foundation, like the one in Rev. Rul. 77-44, expected to receive substantial services from the grantees in return for the grants, thus making the grants more a form of compensation than a scholarship. However, because the public library system was benefited by improving the knowledge and education of its staff, the program was seen to further the activities of the public library system and thus a charitable purpose within the meaning of IRC 501(c)(3), as the public at large was benefited by the overall enrichment of the public library system resulting from the improved capabilities of the staff. Thus, the grants meet the requirements of Reg. 53.4945-4(b)(1)(i). Also, the grants were made for a sufficiently narrow and definite purpose to ensure that the recipients would expend the funds only in a manner that furthers an IRC 501(c)(3) purpose. Consequently, the grants are made to achieve a specific objective within the meaning of IRC 4945(g)(3).

2. Other situations have arisen where preference in a private foundation's grant program has been accorded to newsboys who deliver papers for a particular company, or to the children of dealers or franchise holders of a particular company. In still another, educational grants were provided by a private foundation to children of employees of a particular employer that enabled the recipients to participate in an overseas cultural exchange program.

None of these situations was determined to involve an employer-related program subject to Rev. Procs. 76-47 or 80-39. In the first two instances, the recipients were not employees or children of employees of any employer to which the program relates. In the last situation, the award was not a scholarship or an educational loan. Nevertheless, in each situation described, a benefit is provided to a particular company comparable to that for which the guidelines of the revenue procedures are applicable. Therefore, the private foundations involved in these situations were required to satisfy the guidelines of the revenue procedures to ensure that their programs accomplished charitable purposes consistent with the requirements enumerated in IRC 4945(d)(3) and 4945(g).

4. Grants to Relatives, Descendants, etc.

A number of interesting cases have been considered recently under the taxable expenditure provisions concerning foundation educational grant programs which favor relatives as well as possible acts of self-dealing where disqualified persons are also benefited.

One such case involved an organization the sole activity of which was to provide educational grants to descendants of a particular Revolutionary War soldier. Recipients were selected from among the 300 known descendants based on their financial need or academic potential. All monies for the program were contributed by the descendants or their friends.

Generally, it is considered a charitable purpose to provide financial aid to needy or worthy students to enable them to continue their education. This can be true even though the class of potential beneficiaries is small, as long as it is indefinite. Rev. Rul. 56-403, 1956-2 C.B. 307. However, a trust to benefit relatives is not a charitable trust, although it may be a valid private trust. IV Scott, Trusts section 375.3. In Matter of Beekman, 232 N.Y. 365, 134 N.E. 183 (1922), a corporation organized to educate descendants of William Beekman, who came to America in 1647, and for other purposes, did not qualify as a charitable corporation under state law. The court noted that, "[T]he purpose of confining the benefits of this large estate to members of one family or family tree indicates that it is not a public charity, but a private and rather personal purpose, which permeates the whole." 134 N.E. at 186. Accord, Marriner W. Merrill Family Foundation v. State Tax Commission, 282 P. 2d 333, 3 Utah 2d 244 (1955).

Choosing beneficiaries only from among descendants of a named person, therefore, suggests that private, personal purposes are served by the grants. Private purposes are also suggested by the limitation of grants to descendants because members of the general public can never be benefited by the organization. In addition, the grants will be funded, to a large extent, by relatives of the beneficiaries. Thus, there is a reasonable likelihood that grants will be awarded to beneficiaries directly connected with the organization or chosen, in a sense, by the donors, all of which is inconsistent with an objective and nondiscriminatory grant program as required to satisfy the requirements of IRC 4945(g).

Other cases in this area concern scholarship trusts established pursuant to wills, under the terms of which, relatives of the testators were to be given preference. In one case, "certain worthy needy descendants" of the testator's parents were to be given preference. If no descendants of the family applied or were eligible, then the trustee was empowered to make the scholarship available to a deserving student in the county. In the other case, preference was to be given to the descendants of the testator's deceased father-in-law and mother. Both trusts applied for exemption under IRC 501(c)(3).

In considering the resolution of these cases, attention focused on IRC 508. IRC 508(e)(1)(B) provides, in part, that a private foundation shall not be exempt from taxation under IRC 501(a) unless its governing instrument includes provisions to prohibit the foundation from making any taxable expenditures as defined in IRC 4945(d). IRC 4945(d)(3) defines a taxable expenditure as an amount paid or incurred by a private foundation to an individual for travel, study, or other similar purpose unless the grant is awarded on an objective and nondiscriminatory basis pursuant to the requirements of IRC 4945(g). Reg. 53.4945-4(b) provides, in part, that in order for a private foundation to establish that its grants to individuals are made on an objective and nondiscriminatory basis, grants must be awarded on a basis consistent with the existence of the foundation's exempt status under IRC 501(c)(3), the group from which grantees are selected must be sufficiently broad so as to constitute a charitable class, and the criteria used to select recipients should be related to the purpose of the grant.

Prior to 1969, and the enactment of IRC 508, a number of court cases held that a public educational trust could be established even though some relatives might benefit because they were part of the general class to be assisted, whether or not they were preferred. Estate of Annie Sells v. Comm., 10 T.C. 692 (1948). Since 1969, case law has been changed by IRC 508 and 4945. For purposes of applying the objective and nondiscriminatory requirements, the grant program may be treated as two separate subprograms one of which provides for making grants solely to family members. However, the criterion of being a member of the testator's family is not consistent with an organization's being described in IRC 501(c)(3). A class of potential grantees comprising only family members or relatives does not constitute a charitable class, and the criterion of being a member of the testator's family is not one that is related to the purposes of an educational grant as required by Reg. 53.4945-4(b). Grants made with a preference for family members cannot be considered as awarded on an objective and nondiscriminatory basis and, therefore, the private foundation can never meet IRC 508(e)(1)(B) or consequently, be exempt under IRC 501(a).

An interesting case that raised the issues of self-dealing and taxable expenditures also concerned the adequacy of the applicant pool. A private foundation was formed pursuant to a will to operate a scholarship program. A bank was appointed trustee. The ruling letter approving the grant making procedures contained the following language:

> [This approval] is further conditioned on the premise that no grants will be awarded to relatives of the trust's creators, trustees, or

members of the selection committee, or for a purpose that is inconsistent with the purposes described in section 170(c)(2)(B) of the Code.

Subsequently, the foundation requested a ruling that grants made to descendants of bank employees would not be considered taxable expenditures under IRC 4945 or acts of self-dealing under IRC 4941. At the time the request was made, the applications of a descendant of a bank employee, a bank officer and a bank director were pending. The organization stated, however, that these proposed grantees were duly qualified under the procedures approved by the IRS and not because of their status as descendants of bank employees.

IRC 4941(d)(1)(E) defines the term "self-dealing" to include any direct or indirect transfer to, or for the use by or benefit of, a disqualified person of the income or assets of a private foundation. IRC 4946 defines a "disqualified person" with respect to a private foundation to include a foundation manager and members of his family. IRC 4946(b) states that the term "foundation manager" means an officer, director, or trustee of a foundation or any individual having powers or responsibilities similar to these positions.

Rev. Rul. 74-287, 1974-1 C.B. 327, holds that employees of a trustee bank, who have been delegated fiduciary responsibility for the day-to-day administration and distribution of trust funds are considered foundation managers and, therefore, are disqualified persons with respect to the foundation, even though these employees are ultimately responsible to the bank directors and officers for their actions regarding the trust.

In this case, the bank's officers and directors had sole responsibility for the management of the trust and were, therefore, disqualified persons with respect to it, as were any employees to whom fiduciary responsibilities for the day-to-day administration and distribution of trust funds had been delegated. Any grants made to these individuals or members of their families constitute acts of self-dealing under IRC 4941. Scholarships granted to employees or their family members who have not been delegated such fiduciary responsibility, but who may perform banking duties regarding the trust under the direction of bank officers, etc., however, are not acts of self-dealing.

Regarding the question of whether these grants also constituted taxable expenditures, analysis focused on the issue of whether these grants were awarded on an objective and nondiscriminatory basis as required by Reg. 53.4945-

4(a)(3)(ii). Reg. 53.4945-4(b)(2) states that a grant is awarded on such a basis if the selection is particularly calculated to effectuate the charitable purposes of the grant rather than to benefit particular persons or a particular class of persons. A scholarship grant to a person primarily in his capacity as a relative of, for example, a foundation manager, is prima facie, not made on an objective and nondiscriminatory basis and, therefore, would constitute a taxable expenditure under IRC 4945.

In this case, there was no indication that the grants were to be awarded due to the recipient's relative status. The organization had represented that the proposed grantees were duly qualified under the procedures previously approved by the Service. An award to a person in a close relationship to the foundation may or may not be a taxable expenditure depending on the facts and circumstances of the particular case. Here, the recipients were selected on independent and pre-approved criteria and, therefore, grants awarded under such criteria were not taxable expenditures. A grant is not a taxable expenditure just because a properly selected recipient is a lineal descendant of a foundation manager.

The caveat language in the ruling letter (that no awards may be made to relatives of a trustee, etc.), is meant to indicate that the Commissioner is without authority to approve grant procedures that will award grants to individuals in their private capacities rather than as grantees selected on an objective and nondiscriminatory basis. Grants to such persons could be taxable expenditures but are not per se taxable expenditures. The circumstances of a grantee's being related to a disqualified person will be a fact suggesting the grant is not made on an objective and nondiscriminatory basis pursuant to the procedures previously approved by the Service, however.

In connection with these issues, a variation of the facts was considered. If an organization had two separate grant programs with two separate selection committees, would a grant by one independent selection committee to a relative of a member of the other independent selection committee constitute a taxable expenditure? Reg. 53.4945-4(b)(4) requires that persons making the selection not be in a position to benefit if certain potential grantees are selected over others. It is possible that service by a relative of a potential grantee on a separate selection committee of the same organization could jeopardize the satisfaction of this requirement and raise the suspicion that the relative was influencing the other selection committee thereby, in effect, selecting the particular grantee. Such a suspicion could be overcome, however, by evidence of the strict independence of each committee.

5. IRC 7805(b) Relief

Rev. Rul. 81-217, 1981-2 C.B. 217, is the first revenue ruling to apply IRC 7805(b) to a private foundation regarding its grant making program. In that revenue ruling, two situations are considered. In the first, a private foundation makes grants to another organization (not a private foundation) to fund several scholarships for children who are determined by the grantee organization to be worthy candidates. The private foundation required, however, that its grant money be used first for the benefit of children of employees of a particular company who meet the requirements and are determined to be "finalists" for grant awards. In addition, if the number of finalists from the company are insufficient to exhaust the grant money provided by the private foundation, then the balance is to be used for the benefit of the next most highly rated children of employees of the company, even though they are not finalists. In the second situation, another private foundation also gave grant money under the same circumstances except that its funds can only be used for those children of employees of a particular company who are finalists. The issues considered are whether the grants awarded under these conditions are grants to individuals under IRC 4945(d)(3) and to which the guidelines of Rev. Proc. 76-47, 1976-2 C.B. 670 apply, or grants to an organization under IRC 4945(d)(4).

In finding that these grants are grants to individuals and subject to the revenue procedure's guidelines, the revenue ruling noted that in neither situation was the selecting organization completely independent of the private foundations. Reg. 53.4945-4(a)(4)(i) provides that grants by a private foundation to another organization, which the grantee organization uses to make payments to an individual for IRC 4945(d)(3) purposes, are not considered grants by the private foundation to that individual if the foundation does not earmark the funds for any named individual and there is no agreement by which the foundation may cause the selection of a particular grantee. This is true even though the private foundation may have reason to believe that certain individuals will derive benefits from such a grant, as long as the grantee organization makes the selection "completely independently" of the private foundation. Reg. 53.4945-4(a)(4)(ii) holds that, in the same circumstances, the grant will not be regarded as made by the private foundation to the individual grantee, regardless of Reg. 53.4945-4(a)(4)(i), if the grant is made for a project which is under the supervision of the grantee organization and it selects the recipient, even though the recipient's name was first proposed by the private foundation.

Section 2 of Rev. Proc. 76-47 defines an employer-related program as one that treats some or all of the employees of a particular employer as a group from which some or all of the foundation's grants will be selected, limits the potential grantees or all of the foundation's grants to children of employees of a particular employer, or otherwise gives such children a preference or priority over others in being selected as grantees.

In both situations, the grantee organization does not make its selection "completely independently" of the private foundations as it is authorized to expend money only on behalf of the children of employees of the companies specified by the private foundations. Consequently, the grantee organization is not really the grantee at all but merely an evaluator of applicants for the grant programs of the private foundations. There is no objective manifestation of the grantee organization's control over the selecting process as both private foundations limit consideration to children of employees of particular companies. As a result, the grants were held to be grants to individuals under IRC 4945(d)(3) for which advance approval under IRC 4945(g)(1) is required. In light of this interpretation, the Service provided for the prospective application of the revenue ruling. The conclusion of the revenue ruling was not applied before March 8, 1982, to enable any private foundation operating a grant program in this manner to obtain the necessary advance approval of its procedures. Any grants awarded and paid under this type of program after March 8, 1982, by a private foundation that had not obtained advance approval from the Service would constitute taxable expenditures and be subject to the taxes imposed by IRC 4945(a). The only exception to this rule pertained to fixed sum grants awarded prior to March 8, 1982, but not paid until after that date. Such an award would not constitute a taxable expenditure.

Currently in the National Office several cases are being considered that are similar to that discussed in the revenue ruling; however, they do not involve an intermediary organization such as the grantee organization in the revenue ruling which evaluated the scholarship applicants. In the factual situations now being considered, the private foundation has given funds directly to a college which in turn maintains an evaluation staff whose duty is to select grantees for these funds from among the eligible applicants of a specific company. As this situation is not exactly the same, although it is quite similar to the one described in Rev. Rul. 81-217, the blanket authority for IRC 7805(b) relief contained in the revenue ruling could not be applied. The college here is not the same as the grantee organization of the revenue ruling because the college is not an independent evaluating organization but is the ultimate recipient of the scholarship funds. Because the

situations are substantially similar, however, application of IRC 7805(b) relief will be considered on a case by case basis.