



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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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Contact Person:

Identification Number:

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Employer Identification Number:

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Dear :

This is in reply to your ruling request dated November 7, 2006, submitted by your authorized representative, requesting rulings concerning the effect of operating an art museum and art loan program on your current status under section 501(c)(3) of the Internal Revenue Code and the applicability of section 4942 to these activities.

Facts

You received a determination letter from the Internal Revenue Service that you qualify as an organization described in section 501(c)(3) of the Code and as a private foundation under section 509(a). Your primary activity is making grants to other section 501(c)(3) organizations in support of music, education and the arts.

You own several pieces of artwork, including substantial amounts of contemporary American art. During the next several years, you intend to solicit contributions of artwork and cash to purchase additional artwork. You will store, protect and preserve the artwork in facilities designed for such purposes, that you will either purchase and operate or lease. Once you have acquired a significant body of a particular artist's work, you intend to loan this artwork to other institutions for public exhibition as your principal activity.

Your art lending program will focus on small communities in your state that do not have contemporary art museums. You will loan artwork to museums, galleries, schools/universities, and other similar institutions for public exhibition and to make available to the general public the cultural and artistic enjoyment of the art, to promote public interest in, and knowledge of, the visual arts, and to further research and study pertaining to contemporary art and artists. Among the factors you will consider in lending artwork are the degree of safety of the artwork while on exhibit and in transit, the lack of art galleries showing contemporary art in the community, and the cultural value of the exhibition to the community.

As finances permit, you intend to construct a new building as a museum to exhibit art to the general public. You will use the museum for displaying your artwork and for storage, curatorial and research facilities. The building will be constructed on a parcel of land that will be donated. The museum will also house a publicly accessible research library. Once construction of the museum is completed, you will operate and maintain the museum and art library as your primary activities.

Rulings Requested

1. The change in focus of your overall mission and activities will not jeopardize your current status as an organization described in section 501(c)(3) of the Code.
2. The art you currently own and will subsequently acquire will constitute assets used or held for use directly in carrying out your exempt purposes within the meaning of section 4942(e)(1)(A) of the Code.
3. The museum and library you will construct, own and operate for the preservation and public display of art and for art research will constitute assets used or held for use directly in carrying out your exempt purposes within the meaning of section 4942(e)(1)(A) of the Code.
4. The amounts you will spend to acquire additional art and to construct, own and operate a museum and library for the preservation and public display of art and for art research will constitute "qualifying distributions" within the meaning of section 4942(g)(1) of the Code.

Law

Section 170(c)(2)(B) of the Code describes certain organizations, including those organized and operated exclusively for educational purposes.

Section 501(c)(3) of the Code describes organizations that are organized and operated exclusively for charitable, educational and other purposes.

Section 1.501(c)(3)-1(d)(1) of the Income Tax Regulations includes education as one of the exempt purposes described in section 501(c)(3) of the Code.

Section 1.501(c)(3)-1(d)(3)(i) of the regulations states that the term "educational," as used in section 501(c)(3) of the Code, relates to (a) the instruction or training of the individual for the purpose of improving or developing his capabilities; or (b) the instruction of the public on subjects useful to the individual and beneficial to the community.

Section 1.501(c)(3)-1(d)(3)(ii) of the regulations, Example (4), states that museums, zoos, planetariums, symphony orchestras, and other similar organizations are educational if they otherwise meet the requirements of section 501(c)(3) of the Code.

Section 509(a) of the Code describes organizations exempt from federal income tax under section 501(c)(3) that are private foundations subject to the private foundation provisions of Chapter 42.

Sections 4942(a) and 4942(b) of the Code impose excise taxes on the "undistributed income" of a private foundation.

Section 4942(c) of the Code defines the term "undistributed income" as the amount by which the private foundation's "distributable amount" exceeds its "qualifying distributions" for the year.

Section 4942(d) of the Code defines the term "distributable amount" as including the foundation's "minimum investment return."

Section 4942(e)(1)(A) of the Code excludes from the computation of "minimum investment return" assets used (or held for use) directly in carrying out a foundation's exempt purpose.

Section 4942(g)(1) of the Code defines the term "qualifying distribution" for purposes of section 4942 as any amount paid to accomplish one or more purposes described in section 170(c)(2)(B) or any amount paid to acquire an asset used (or held for use) directly in carrying out one or more purposes described in section 170(c)(2)(B).

Section 53.4942(a)-2(c)(2)(v) of the Foundation and Similar Excise Taxes Regulations provides that assets used in determining a private foundation's "minimum investment return" shall not include any assets used (or held for use) directly in carrying out its exempt purpose.

Section 53.4942(a)-2(c)(3)(i) of the regulations provides that an asset is used (or held for use) directly in carrying out a foundation's exempt purposes only if the asset is actually used by a foundation in carrying out its exempt purposes.

Section 53.4942(a)-2(c)(3)(ii) of the regulations gives several examples of assets which are used (or held for use) directly in carrying out the foundation's exempt purpose: Section 53.4942(a)-2(c)(3)(ii)(b) describes real estate or a portion of a building used by a foundation directly in its educational activities, and section 53.4942(a)-2(c)(3)(ii)(c) describes paintings or other works of art owned by a foundation which are on public display, and research facilities and related equipment that serve a useful purpose in conducting educational activities.

Section 53.4942(a)-3(a)(2)(i) of the regulations provides that the term "qualifying distribution" includes any amount paid to accomplish one or more purposes described in section 170(c)(1) or section 170(c)(2)(B) of the Code. Section 53.4942(a)-3(a)(2)(ii) of the regulations provides that this term includes any amount paid to acquire an asset used (or held for use) directly in carrying out one or more purposes described in section 170(c)(1) or section 170(c)(2)(B) of the Code.

In Example (3) of section 53.4942(a)-3(a)(7) of the regulations, a private foundation that engaged in holding paintings and exhibiting them to the public, purchased an additional building to be used to exhibit the paintings. This expenditure constituted a qualifying distribution under section 53.4942(a)-3(a)(2).

In Rev. Rul. 64-174, 1964-1 C.B. 183, a foundation was formed for creating interest in the development of the American theater outside of New York City. The foundation aided local communities in establishing their own charitable and educational repertory theaters. It also contributed part of its funds to exempt charities furthering this purpose. This ruling concludes that these activities are charitable or educational, since they are a means of advancing charity and education.

In Rev. Rul. 64-175, 1964-1 C.B. 185, a foundation was formed for developing and operating a permanent touring repertory theater in the United States. The foundation focused on creating a repertory theater outside of areas which already had theater. The foundation worked with colleges in order to achieve this goal. Specifically, the foundation worked closely with colleges in relating local performances to the local college curricula, especially English and Drama. This ruling concludes that these activities are educational, since they are a means of advancing education.

In Rev. Rul. 68-307, 1968-1 C.B. 258, a nonprofit organization assisted the National Park Service in its educational and scientific programs regarding a specific park. In addition to other activities, the organization assisted the Park Service in developing the park library and museum, in preserving historic objects and, generally, in furthering the educational and scientific aims of the Park Service. This ruling concludes that these activities are charitable since they are a means of advancing education and science.

In Rev. Rul. 68-372, 1968-2 C.B. 205, a nonprofit organization was created to acquire, maintain and display sports objects of lasting interest or value relating to a particular sport. These activities furthered the educational aims of the organization. This ruling concludes that these activities are charitable since they are a means of advancing education.

Rev. Rul. 74-498, 1974-2 C.B. 387, holds that a collection of paintings owned by a foundation formed to further the arts, which are loaned under an active loan program for exhibition in museums, universities, and similar institutions, are being used directly in carrying out the foundation's exempt purposes within the meaning of section 4942(e)(1)(A) of the Code, and the value of the paintings is excludable in computing the foundation's minimum investment return.

Analysis

Ruling No. 1

The museum and library you will construct, own and operate for the preservation and public display of art and for art research are similar to the museum in Example (4) in section 1.501(c)(3)-1(d)(3)(ii) of the regulations. In addition, your educational activities with respect to the museum and library are similar to the educational activities of the organizations described in Rev. Rul. 64-174, Rev. Rul. 64-175, Rev. Rul. 68-307 and Rev. Rul. 68-372. You will no longer be making grants to other section 501(c)(3) organizations in support of music, education and the arts as your primary activity. However, based on these authorities, your new activities, as described above, will constitute activities that further education within the meaning of section 1.501(c)(3)-1(d)(3)(i) of the regulations. Therefore, your new activities will not adversely affect your current status as an organization described in section 501(c)(3) of the Code.

Rulings No. 2 and 3

In Ruling No. 1, we concluded that your new activities, as described above, will constitute activities that further education within the meaning of section 1.501(c)(3)-1(d)(3)(i) of the regulations. In addition, your operation of an art museum and an art library are similar to the examples in sections 53.4942(a)-2(c)(3)(ii)(b) and 53.4942(a)-2(c)(3)(ii)(c). Furthermore, your art loan program is similar to the loan program described in Rev. Rul. 74-498, *supra*, which concluded that the art collection was being used directly in carrying out the foundation's exempt purposes under section 4942(e)(1)(A) of the Code. Therefore, your artwork, art museum and art library will constitute assets used (or held for use) directly in carrying out your exempt purposes within the meaning of section 4942(e)(1)(A) and section 53.4942(a)-2(c)(3)(i) of the regulations.

Ruling No. 4

In Ruling No. 1, we concluded that your new activities, as described above, will constitute activities that further education within the meaning of section 1.501(c)(3)-1(d)(3)(i) of the regulations. Your expenditures to acquire additional art and to construct and operate a museum and library for the preservation and public display of art and for art research will further education. In addition, these expenditures are similar to the expenditures described in Example (3) in section 53.4942(a)-3(a)(7). Therefore, your expenditures for the purchase of additional art and for the construction of an art museum and art library will constitute amounts paid to acquire assets to be used (or to be held for use) directly in carrying out one or more of the purposes described in section 170(c)(2)(B) of the Code. Consequently, these expenditures will constitute "qualifying distributions" within the meaning of section 4942(g) and section 53.4942(a)-3(a)(2) of the regulations.

Rulings

1. The change in focus of your overall mission and activities will not jeopardize your current status as an organization described in section 501(c)(3) of the Code.
2. The art you currently own and will subsequently acquire will constitute assets used or held for use directly in carrying out your exempt purposes within the meaning of section 4942(e)(1)(A) of the Code.

3. The museum and library you will construct, own and operate for the preservation and public display of art and for art research will constitute assets used or held for use directly in carrying out your exempt purposes within the meaning of section 4942(e)(1)(A) of the Code.
4. The amounts you will spend to acquire additional art and to construct, own and operate a museum and library for the preservation and public display of art and for art research will constitute "qualifying distributions" within the meaning of section 4942(g)(1) of the Code.

This ruling is based on the understanding there will be no material changes in the facts upon which it is based.

This ruling does not address the applicability of any section of the Code or regulations to the facts submitted other than with respect to the sections described.

This ruling is directed only to the organization that requested it. Section 6110(k)(3) of the Code provides it may not be used or cited by others as precedent.

This ruling will be made available for public inspection under section 6110 of the Code after certain deletions of identifying information are made. For details, see enclosed Notice 437, *Notice of Intention to Disclose*. A copy of this ruling with deletions that we intend to make available for public inspection is attached to Notice 437. If you disagree with our proposed deletions, you should follow the instructions in Notice 437.

If you have any questions about this ruling, please contact the person whose name and telephone number are shown in the heading of this letter.

In accordance with the Power of Attorney currently on file with the Internal Revenue Service, we are sending a copy of this letter to your authorized representative.

Sincerely,

Steven B. Grodnitzky
Manager, Exempt Organizations
Technical Group 1

Enclosure
Notice 437