

Internal Revenue Service
P.O. Box 2508
Cincinnati, OH 45201

Department of the Treasury

Number: **201340018**
Release Date: 10/4/2013

Employer Identification Number:

Contact person - ID number:

Contact telephone number:

Date: July 9, 2013

LEGEND:

W= program
X= city/state
Y = college
Z = individual
b= dollar amount
c = dollar amount

UIL: 4945.04-04

Dear _____ :

You asked for advance approval of your educational grant procedures under Internal Revenue Code section 4945(g)(3). This approval is required because you are a private foundation that is exempt from federal income tax.

Our determination

We approved your procedures for awarding educational grants. Based on the information you submitted, and assuming you will conduct your program as proposed, we determined that your procedures for awarding educational grants meet the requirements of Code section 4945(g)(3). As a result, expenditures you make under these procedures won't be taxable.

Description of your request

You will operate a program called W to bring together artists and scholars of exceptional talent and promise for a residency program in X. The mission of W is to nurture and facilitate experimentation, collaboration and innovation by enabling artists and scholars to exchange ideas, collaborate and advance mutual expression and understanding, all in furtherance of your goals of using art to change the world, cultivating talent and supporting new ideas and artistic exploration.

The Program is inspired by Z's early years at Y, where an artistic community brought out elements central to his legacy – and exploration - which allowed him to learn from and work with others to break new ground.

W will bring together - from around the world - small groups of leaders in the arts (visual, music, dance, and writing) as well as scholars in a variety of disciplines to live, work, share ideas and develop new work in residence on the property.

The grants will largely be in the form of in-kind benefits. Residents will be invited to live at X, where they will be provided with housing, meals, studio space and art materials. You will reimburse the residents for the expense of traveling to and from X. Residencies are initially anticipated to be for one month, but the duration may vary as W evolves, although it is not expected that any residencies will last for more than one year. In the second phase of the program (described below), you may also provide a modest stipend of b to c dollars to defray any lost income resulting from a resident's participation in W.

W will be described on your website. Your Executive Director and the W's Creative Director will spread the word among, and request nominations for, promising candidates from the established artists and scholars with which they interact in the course of your other programming. It is anticipated that alumni of W will also publicize the opportunity and nominate promising candidates for consideration. Invitations to apply may be posted with various art schools and institutions and in other forums frequented by artists and scholars. You will develop solicitations and announcement materials advertising W to the public.

No application has yet been developed. It is anticipated that applicants will be asked to provide a resume or portfolio, a description of the work they plan to do or the issue, idea, or technique they plan to explore during their time at X, and/or an explanation of how their work complements the vision of you and/or Z. Letters of reference from those with expertise in the applicant's field may also be requested.

The procedures for applying may vary through time. Interested individuals may be allowed to apply directly to you, or you may require that applicants be nominated by a committee of nominators who are experts in their fields and appointed by your board of directors.

Individuals eligible to participate in W include visual artists, dancers, choreographers, writers, composers, and musicians, as well as scholars in various disciplines relevant to your charitable programs. Both those who are recognized as accomplished in their field and those who have not yet achieved widespread recognition but exhibit strong potential will be eligible. Both those with formal institutional training and those with more unorthodox backgrounds will be eligible. You will also strive to bring together residents from diverse geographic regions, to further your mission of fostering international understanding and cultural exchange.

Grants will be awarded on the basis of the intrinsic interest of a candidate's current work or proposed project, its alignment with or relevance to your exempt purposes and the candidate's prior experience and contributions to their field or demonstrated achievement or potential. Cohorts of residents may be selected based on your anticipation that

collaborations or dialogues among certain diverse perspectives or among individuals from distant locations or different disciplines exploring similar themes may be particularly fruitful and catalytic.

Application review and selection may be a one-step or a two-step process, but all grants will be subject to final approval by your board, which may delegate its approval authority to your Executive Director or the Creative Director of W. In some cases, your board may directly review grant applications or nominations and select the grant recipients based on its review. In other cases, your board may appoint a selection committee comprised of directors and/or independent reviewers, which will review the grant applications or nominations and select finalists for your board to consider. Although not required in all cases, individuals who pass the initial review process may be interviewed or asked to submit additional information.

You expect to launch W two phases, and the selection criteria for each phase will be slightly different. During the Pilot Year, artists who either had a working relationship with Z, were influenced by his work, or are currently prominent contemporary artists (either visual artists, dancers, choreographers, writers, composers, or musicians) will be invited to attend a month-long residency, with six to ten artists in residence at a time. These Pilot participants will be invited with the understanding that they will provide feedback to assist with the development and enhancement of W. Their assessment and advice will be solicited with respect to all aspects of W, including the effectiveness of proposed programs for the residents, community outreach techniques, equipment needs, and logistical matters such as meals and housing. Participants in the Pilot program will also be asked to recommend future grant recipients.

Because you will look to Pilot participants for feedback, you will take additional factors into consideration when selecting participants in the Pilot Year, including the participants':

- (i) potential for providing insight with respect to how w can best reflect Z vision;
- (ii) ability to assess and convey the needs of residents in their respective fields, in order to ensure that W is developed with the facilities and materials necessary to make the residencies as productive as possible;
- (iii) likelihood of providing forthright, constructive criticism to help shape the W.

After the Pilot, participants in W will not be required to provide feedback, although you will continue to collect feedback by requesting evaluations from residents. As described above, the particular selection criteria for any particular cohort of residents may vary depending on whether you want to encourage the exploration of any particular theme, technique, or issue during a particular residency session.

It is currently envisioned that between six to ten artists will be in residence at a time, although the number of attendees could change in the future. Residencies are initially anticipated to be for one month, but the duration may vary as W evolves. Looking to other artist residency programs as models, you have determined that one month is an optimum time both for providing adequate opportunity for exploration and sparking productive exchanges and collaborations. Grants will cover the cost of travel to and from the residency and housing, meals, studio space and materials during the residency.

You do not currently anticipate that residencies will be renewed. If a residency has been particularly fruitful and both the resident and you feel that allowing the residency to end when scheduled would be disruptive to the on-going project, you may consider extending the residency to allow the project to come to an appropriate stopping point.

The grantees will be required to sign a grant agreement in which the grantee agrees to participate in good faith in W. To the extent that the resident may be required to attend group sessions or facilitated discussions among residents, such participation will be set forth and agreed to in the grant agreement. For the Pilot program, the requirement that the residents provide feedback on the program will be set forth and agreed to in the grant agreement. Residents will be required to prepare a report summarizing what they accomplished during the residency and/or how their work was influenced by their participation in W.

This report may be written and submitted to you or orally presented to the group at the end of the residency. If the work is an artistic creation, the report may be in the form of a performance or showing of the work to the group at the end of the residency. The grant agreement will require that any stipend be returned if the resident fails to participate in good faith in W.

Since the "grant" is primarily in the form of in-kind provision of room, board, travel, studio space and supplies at your property, you (through the Creative Director of W and other staff) can oversee the residents' participation in W. Any stipend will be disbursed after the resident's arrival at X. If a resident fails to participate in good faith in W, the resident will be asked to leave his or her residency early and you may seek return of the stipend through whatever legal means are practical.

During the Pilot year, your board will act as the initial selection committee and may delegate the selection duties to your Executive Director or the Creative Director of W.

After the Pilot year, your board, Executive Director and/or W's Creative Director may continue to make the selection of residents directly or a selection committee may be established. If established, the selection committee would be comprised of a subset of Board directors and/or independent reviewers with expertise in the various disciplines for which residents are being sought (e.g., visual arts, dance, choreography, writing, music or various areas of scholarship). You would also seek to have artists, critics, and scholars who had a working relationship with Z or were influenced by his work serve on the selection committee.

An individual selection committee member may be asked to serve for certain period of time (likely one to two years), or may be convened for a one-time consultation to provide his or her individual expertise when applicants working in his or her field are being considered. A selection committee member's term of service will expire at the pre-determined time, at which time new members will be appointed by the Board.

Relatives of your officers, directors and substantial contributors, and any other disqualified persons (within the meaning of Code Section 4946) with respect to you, are not eligible for awards made under W. If a selection committee is employed, relatives of members of the selection committee will also be ineligible for awards. Participants in W may not include anyone whose selection would result in a private benefit to any of the aforementioned individuals.

You will maintain case histories showing the recipients of the grants. These records will include:

- (1) name and address of each recipient and the amount of each grant (duration of residency and amount of stipend, if any);
- (2) all information obtained in connection with evaluating the qualifications of potential grant recipients, and a record of the decision making process by which recipients were selected;
- (3) identification information about each grant recipient, including all information necessary to assure that a grant recipient is not a disqualified person with respect to you within the meaning of Code Section 4946(a)(1) and is not related to an officer, director, or donor ;
- (4) the reports from the individual grantees on their use of grant funds (what they achieved during the residency) and any other information obtained in the course of supervising grants; and
- (5) information obtained, or a description of the steps taken, in connection with the investigation or enforcement of any jeopardized grants.

Basis for our determination

The law imposes certain excise taxes on the taxable expenditures of private foundations (Code section 4945). A taxable expenditure is any amount a private foundation pays as a grant to an individual for travel, study, or other similar purposes. However, a grant that meets all of the following requirements of Code section 4945(g) is not a taxable expenditure.

- The foundation awards the grant on an objective and nondiscriminatory basis.
- The IRS approves in advance the procedure for awarding the grant.
- The grant is:

- A scholarship or fellowship subject to section 117(a) and is to be used for study at an educational organization described in section 170(b)(1)(A)(ii); or
- A prize or award subject to the provisions of section 74(b), if the recipient of the prize or award is selected from the general public; or
- To achieve a specific objective; produce a report or similar product; or improve or enhance a literary, artistic, musical, scientific, teaching, or other similar skill or talent of the recipient.

To receive approval of its educational grant procedures, Treasury Regulations section 53.4945-4(c) (1) requires that a private foundation show:

- The grant procedure includes an objective and nondiscriminatory selection process.
- The grant procedure results in the recipients performing the activities the grants were intended to finance.
- The foundation plans to obtain reports to determine whether the recipients have performed the activities that the grants were intended to finance.

Other conditions that apply to this determination

- This determination covers only the grant program described above. This approval will apply to succeeding grant programs only if their standards and procedures don't differ significantly from those described in your original request.
- This determination applies only to you. It may not be cited as precedent.
- You cannot rely on the conclusions in this letter if the facts you provided have changed substantially. You must report any significant changes in your program to the Office of Exempt Organizations at:

Internal Revenue Service
Exempt Organizations Determinations

- You cannot make grants to your creators, officers, directors, trustees, foundation managers, or members of selection committees or their relatives.
- All funds distributed to individuals must be made on a charitable basis and must further the purposes of your organization. You cannot award grants for a purpose that is inconsistent with Code section 170(c) (2) (B).
- You should keep adequate records and case histories so that you can substantiate your grant distributions with the IRS if necessary.

We've sent a copy of this letter to your representative as indicated in your power of attorney.

Please keep a copy of this letter in your records.

If you have any questions, please contact the person listed at the top of this letter.

Sincerely,

Kenneth Corbin
Acting Director, Exempt Organizations