

Internal Revenue Service

P.O. Box 2508
Cincinnati, OH 45201

Department of the TreasuryNumber: **202127046**

Release Date: 7/9/2021

Date: April 13, 2021**Employer Identification Number:****Contact person - ID number:****Contact telephone number:****LEGEND**

UIL: 4945.04-04

x dollars= Amount

y = Numbers

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

Your letter indicates that you will operate a grant making program.

The purpose of your grant making program is to award grants to qualified musicians to accompany the live presentation of restored silent films usually by charitable organizations, in order to promote the restored silent film's historic, educational and artistic value. Specifically, you wish to facilitate the presentation of restored silent films to the public by providing grants to qualified musicians to provide musical accompaniment as was the case when the films were originally presented. Further, the venues at which the restored silent films will be featured with live accompaniment are educational establishments, and include, inter alia, universities and secondary schools, as well as various silent film festivals, both domestic and international, and museums. The amount of each grant will vary depending on each grantee's qualifications and previous achievements. Based on research and due diligence, you have determined a grant of approximately x dollars per live accompaniment to be reasonable and appropriate. Furthermore, this amount is likely under the market rate for many qualified musicians. Additionally, the number of grants made annually will vary based and likely be in the range of y grants per year.

To promote the program, word of mouth, publicity on the internet, and oral communications with community groups of musicians, silent film restorationists, and silent film archivists will be employed to locate potential applicants. Furthermore, the charitable organization responsible for the restoration of the silent film may initially undertake promotion of the grant.

To apply for the grant, interested musicians must apply directly to the Selection Committee and provide their qualifications. There is no specific application. For example, a potential grantee may provide a written resume detailing their educational accomplishments and relevant experience. Potential grantees may also wish to submit recordings and/or materials regarding past performances and their unique qualifications. In a number of cases, the Selection Committee will have heard prior performances by the musician and so, be personally familiar with their talents and abilities.

All materials for potential grantees will be reviewed by the Selection Committee, which will at all times consist of at least three members. You will determine Selection Committee membership based on some or all of the following criteria: (1) educational accomplishments; (2) previous experience within the community of musicians, silent film restorationists, and/or silent film archivists; and (3) recognition of unique qualifications relating to musicians, silent film restorationists, and silent film archivists. In addition, the members of the Selection Committee will likely consist of:

- Your representative such as a director or an officer;
- A representative of the charitable organization responsible for the restoration of the restored silent film for which live accompaniment is sought;
- A representative of a recognized association of silent film specialists, and/or a representative of the venue at which the restored silent film(s) will be shown with live accompaniment; and
- An independent individual uniquely qualified to assess whether the musicians considered are qualified to carry out the charitable purpose that the grants aim to achieve.

Further, at no time will there be more than one "Disqualified Person," as the term is defined under Section 4946(a), serving on the Selection Committee.

Members of the Selection Committee will review the materials provided by the potential grantee. Specifically, the Selection Committee will evaluate and consider the qualifications of each potential grantee based solely on their ability to perform and enhance and enrich the historical importance of the restored silent films. For example, the Selection Committee may review a potential grantee's resume, past performances, personal website, etc. The Selection Committee may also interview the applicants to determine their fitness and qualifications to perform and enrich the historical and artistic importance of the restored silent film.

The Selection Committee will then select individual grantees based on the following specific criteria: (1) educational accomplishments; (2) previous positions held (compositions, recorded accompaniment in silent films, public acclaim, etc.); (3) previous experience providing live accompaniment to silent films or significant experience with a unique instrument especially suited for silent films; and (4) recognition of unique qualifications within the musical and silent film community. In no way is eligibility to receive a grant based on discrimination or limited to a specific geographic location, or race, color, national origin, or ethnic group.

Following the Selection Committee's initial selection of a grantee, the same grantee may be selected to receive additional grants. There is no requirement or condition that you impose on recipients obtaining multiple grants, other than the requirement that the grantee must perform live accompaniment of restored silent films where such accompaniment promotes the restored silent film's historic, educational and/or artistic value. Due to the uniqueness of the grant program, it is likely that one or more musicians will qualify for multiple grants to accompany the same restored silent film at multiple venues.

As a condition of receiving the grant, each recipient must provide to you a report regarding the performance to which the grant is related. The report is due no more than one month following the performance to which the grant related.

If you discover that the recipient failed to provide live accompaniment of a restored silent film where such accompaniment promotes the restored silent film's historic, educational and/or artistic value, or that the performance was limited to a select group of individuals rather than the public at large, then you will take all reasonable and appropriate steps (including legal action in some circumstances) to recover the amount of the grant. If this action occurs, then such grantee will be ineligible to receive future grants unless you receive adequate assurances that no future violations will occur. These assurances must be well documented and will be thoroughly reviewed by you.

You represent that you will complete the following: (1) arrange to receive and review grantee reports annually and upon completion of the purpose for which the grant was awarded, (2) investigate diversion of funds from their intended purposes, (3) take all reasonable and appropriate steps to recover the diverted funds, ensure other grant funds held by the grantee are used for their intended purposes, and withhold further payments to grantees until you obtain grantees' assurances that future diversions will not occur and that grantees will take extraordinary precautions to prevent future diversions from occurring.

You represent that you will maintain all records related to the following: (1) individual grants including information to evaluate grantees, (2) grantees which are identified as a disqualified person, (3) how the amount and purpose of each grant was established, and (4) how you established supervision and investigation of the grants described above.

You will check the OFAC List of Specially Designated Nationals and Blocked Persons for names of individuals and entities with whom you are dealing to determine if they are included on the list. You will comply with all statutes, executive orders, and regulations that restrict or prohibit persons from engaging in transactions and dealings with designated countries, entities, or individuals, or otherwise engaging in activities in violation of economic sanctions administered by OFAC. You will acquire from OFAC the appropriate license and registration where necessary.

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 Cincinnati Office of Exempt Organizations at:

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

- 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.

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,

Stephen A. Martin
Director, Exempt Organizations
Rulings and Agreements