



Department of the Treasury
Internal Revenue Service
Tax Exempt and Government Entities
PO Box 2508
Cincinnati, OH 45201

Date: 04/13/2022

Employer ID number:

Person to contact:

Release Number: 202227016

Release Date: 7/8/2022

LEGEND

B = Organization

C = Culture

x dollars = Amount

UIL: 509.02-01

Dear _____ :

We have considered your March 11, 2021 request for recognition of an unusual grant under Treasury Regulation Section 1.170A-9(f)(6)(ii) and related provisions.

Based on the information provided, we concluded that the proposed grant constitutes an unusual grant under Treas. Reg. Section 1.170A-9(f)(6)(ii) and related provisions of the regulations. The basis for our conclusion is discussed below.

Facts:

You are classified as a public charity under Internal Revenue Code (IRC) Section 509(a)(2). You are dedicated to advocate for C visual art, artists, and art history and your mission is to foster understanding of rich diversity and cross-cutting complexity of the C community. Your gross receipts were less than \$50,000 between _____ and _____ and had filed Form 990-N since your formation. You are able to raise a growing influx of donations and grants from a broad spectrum of individuals and other IRC Section 501(c)(3) organizations.

B's board of trustees notified you their interest in providing a grant in the amount of x dollars for a new C artists fellowship program. The program will address the underrepresentation and invisibility of the rich contributions of C artists and creatives to American art and culture. It is an unconditional grant and would provide funding for the fellowship program over a five-year period.

The grant from B is highly unusual to you in terms of your historical fundraising results and the magnitude of the grant amount. You expect that you will meet the public support test in future years. B has not previously supported you and is a disinterested party. B does not directly or indirectly exercise control over you and you have a representative governing body.

Law:

Two sections of the Treasury Regulations set forth the criteria for an unusual grant. They are:

Treasury Regulation Section 1.170A-9(f)(6)(ii)

This section states that, for purposes of applying the 2% limitation to determine whether the 33 1/3% of-support test is satisfied or the 10 % support limitation is met, one or more contributions may be excluded from both the numerator and the denominator of the applicable percent-of-support fraction. The exclusion is generally intended to apply to substantial contributions or bequests from disinterested parties which:

- are attracted by reason of the publicly supported nature of the organization;
- are unusual or unexpected with respect to the amount thereof; and
- would, by reason of their size, adversely affect the status of the organization as normally being publicly supported.

Treasury Regulation Section 1.509(a)-3(c)(4)

This section states that all pertinent facts and circumstances will be taken into consideration to determine whether a particular contribution may be excluded. No single factor will necessarily be determinative. Such factors may include:

- Whether the contribution was made by a person who;
 - a. created the organization;
 - b. previously contributed a substantial part of its support or endowment;
 - c. stood in a position of authority with respect to the organization, such as a foundation manager within the meaning of Internal Revenue Code (IRC) Section 4946(b);
 - d. directly or indirectly exercised control over the organization, or;
 - e. was in a relationship described in IRC Section 4946(a)(1)(C) through 4946(a)(1) (G) with someone listed in bullets a, b, c, or d above.

A contribution made by a person described in bullets a through e is ordinarily given less favorable consideration than a contribution made by others not described above.

- Whether the contribution was a bequest or an inter vivos transfer. A bequest will ordinarily be given more favorable consideration than an inter vivos transfer.
- Whether the contribution was in the form of cash, readily marketable securities, or assets which further the exempt purposes of the organization, such as a gift of a painting to a museum.
- Whether (except in the case of a new organization) prior to the receipt of the particular contribution, the organization (a) has carried on an actual program of public solicitation and exempt activities and (b) has been able to attract a significant amount of public support
- Whether the organization may reasonably be expected to attract a significant amount of public support after the particular contribution. Continued reliance on unusual grants to fund an organization's current operating expenses (as opposed to providing new endowment funds) may be evidence that the organization cannot reasonably be expected to attract future public support.
- Whether, prior to the year in which the particular contribution was received, the organization met the one-third support test described in Treas. Reg. Section 1.509(a)-3(a)(2) without the benefit of any exclusions of unusual grants pursuant to Treas. Reg. Section 1.509-3(c)(3);
- Whether the organization has a representative governing body as described in in Treas. Reg. Section 1.509(a)-3(d)(3)(i); and
- Whether material restrictions or conditions within the meaning of Treas. Reg. Section 1.507-2(a)(7) have been imposed by the transferor upon the transferee in connection with such transfer.

Application of Law:

The grant meets the requirements of Treas. Reg. Section 1.170A-9(f)(6)(ii) because the grant is from a disinterested party, is attracted by reason of your publicly supported nature, is considered unusual and unexpected with respect to the amount, and would, by reason of the size, adversely affect your status as normally being publicly supported.

Treas. Reg. Section 1.509(a)-3(c)(4) states that all pertinent facts and circumstances will be taken into consideration to determine whether a particular contribution may be excluded. Factors considered include:

- The contribution is not made by any person who created you, previously contributed a substantial part of your support, stood in a position of authority over you, or directly or indirectly exercised control over you.
- The contribution is a cash contribution that will be used to further your exempt purposes.
- You have carried on an actual program of public solicitation and exempt activities and have been able to attract public support.
- You can reasonably be expected to attract a significant amount of public support after this contribution.
- You have a representative governing body.
- There are no material restrictions or conditions imposed by the transferor in connection with such transfer.

For all the foregoing reasons, the prospective grant should be characterized as an unusual grant within the meaning of Treas. Reg. Section 1.509(a)-3(c)(4).

We'll make this determination letter available for public inspection after deleting personally identifiable information, as required by IRC Section 6110. We've enclosed Letter 437, Notice of Intention to Disclose - Rulings, and a copy of the letter that shows our proposed deletions.

- If you disagree with our proposed deletions, follow the instructions in the Letter 437 on how to notify us.
- If you agree with our deletions, you don't need to take any further action.

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

Sincerely,

Stephen A. Martin
Director, Exempt Organizations
Rulings and Agreements

Enclosures:

Redacted Letter 4787
Letter 437