

# **Bond Case Briefs**

*Municipal Finance Law Since 1971*

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## **Foundation's Grantmaking Expenditures Not Taxable.**

The IRS ruled that expenditures made through a private foundation's grantmaking program through which American art will be brought to international audiences will not be taxable.

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 are dedicated to fostering exploration, understanding, and enjoyment of the visual arts of the United States for national and international audiences. You are committed to supporting projects designed to engage audiences around the globe in an enriched dialogue on American art. Through grants and initiatives, you have made it a priority to bring American art, interpretation, and research resources to international audiences, and have a particular interest in fostering multi-national perspectives.

In furtherance of this international perspective, you will initiate a grant making program called B. The B will further your mission of internationalizing the field of American art by supporting scholars worldwide who share your goals of excellence and originality. In addition to encouraging international scholarship, B will enrich the field through the introduction of new approaches to American art research and will enable scholars outside the United States greater access to American art scholarship. It also will allow them to publish on this topic in their home countries.

Awards under B generally will be made to qualified publishers of selected works. Such grants will be treated as grants to organizations. In limited circumstances described below, however, certain grants will be made directly to individual authors and volume editors and/or contributors. The grants to individuals is the reason you are requesting advance approval under section 4945(g)(3).

B will support scholarly publications that (1) offer translations of key texts on American art, (2) encourage international scholarship on American art, or (3) present focused theses exploring American art in an international context. B is designed to determine the nature of the proposed publication, the professional qualifications of the publisher, the professional qualifications of the author, the commitment and capacity of the author and his or her publisher, and the expected outcomes of publication.

You initially intend to operate B with a three-year budget of x dollars. Grants to support the publication of a book generally will not exceed y dollars, and grants to support the publication of an article generally will not exceed z dollars, although you may vary the size of the grants based on the quality of the applications received and the amount requested. Funds awarded under B will be used for direct costs of publishing the particular work, including translation costs and image rights of black-and-white or full-color illustrations.

You will promote the grants through an extensive list of academic and museum contacts. Grant announcements will be posted on your website and distributed to various relevant associations worldwide. Additionally, information about the grants will be disseminated to individuals through your general e-newsletter, as well as international curators, publishers, and scholars through targeted e-blasts. Posters and postcards are also distributed to major universities and museums to increase the visibility of your grant program.

Each application must be for a scholarly book or article in print or digital format that focuses on historical American art (circa 1500 to 1980), that has an international dimension, and that is under contract for publication. You will strongly encourage applications for:

Translations of books and articles originally written or published in English.

English-language translations of books and articles originally written or published in another language.

Books and articles for publication outside the United States.

Internationally collaborative projects.

Books and articles examining American art in an international context.

Neither new exhibition catalogues nor collection catalogues are eligible for grants under your program; however, translations or reprints of exhibition catalogues that were originally published prior to 2005 may be considered if they contain substantial scholarship.

In reviewing applications, your review committees will consider objective criteria regarding each application. The criteria you will consider include:

The publication's significant contribution to the field of American art as well as its place in the current literature on the topic.

The publisher's history, mission, and art list.

The distribution and marketing plan for the publication.

The author's curriculum vitae.

A partial (in the case of a book) or full (in the case of an article) manuscript, including sample book chapters in both languages if the project involves translation or a detailed English abstract if the article is in a language other than English.

Two or more recent peer reviews of the full manuscript.

The publisher's endorsement of the manuscript.

Your organization will review applications using internal and external review committees. The

external review committee will be comprised of three or more international scholars in the field of American art, each with extensive subject matter knowledge and experience. All external review committee members will be asked to provide a list of potential personal and/or financial conflicts, and will be asked to recuse themselves should any conflicts arise. External review committee members shall remain anonymous to the public and to applicants during their term on the committee. No external review committee member may benefit personally or professionally from the selection of any particular application for the grant.

The internal review committee will consist of your staff including scholars of American art. Your staff will process and review applications received, with a focus on accomplishing your goal of international exposure for American art. Your internal review committee will collect the recommendations of the external review committee and combine these results with your internal review committee. The internal review committee will make the final decision regarding the recipients. No internal review committee member may benefit personally or professionally from the selection of any particular application for a grant.

B awards generally will be paid to the qualified publisher to be used only for the approved publication; however, grants will be made directly to authors in certain circumstances.

Each grant will be made pursuant to a written grant agreement with the publisher or author. The grant agreement will limit the use of the funds to those enumerated in the approved application. Grant recipients will be required to submit periodic reports to you, and a schedule of deadlines for these reports will be outlined in the grant agreement. If required reports are delinquent or there are other indications of a possible diversion of funds, follow-up requests will be submitted. If satisfactory reports are not received after a reasonable time, you will attempt to recover the funds. While conducting an investigation, you will withhold future payments (if any) until the delinquent reports have been submitted. If a diversion is determined to have occurred, no future payments will be made to the recipient and appropriate steps will be taken to recover the grant funds. You will maintain appropriate records regarding the amount of the grant, grant recipient, information sufficient to insure that the recipient was not a "disqualified person" under Code Section 4946 with respect to you for the purposes of the self-dealing rules set forth in Code Section 4941, the purpose of the grant, the grant agreement and final report, and all follow-up information regarding progress reports, any suspension of grants, and any investigations of possible diversion of grant funds.

#### 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:

\* \* \*

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,

Holly O. Paz

Director, Exempt Organizations

Rulings and Agreements

Citations: LTR 201318008

