



Department of the Treasury Internal
Revenue Service
Tax Exempt and Government Entities

Date:
09/09/2024
Taxpayer ID number:

Person to contact:

Release Number: 202449021
Release Date: 12/6/2024

LEGEND

B = Name
C = Location
D = Name
E = Numbers
G = Number
y dollars = Amounts
z dollars = Amount

UIL: 4945.04.04

Dear :

You asked for advance approval of your educational grant procedures under Internal Revenue Code (IRC) Section 4945(g)(3).

This approval is required because IRC Section 4945 provides for the imposition of taxes on each taxable expenditure of a private foundation. IRC Section 4945(d)(3) provides that the term "taxable expenditure" includes any amount paid or incurred by a private foundation as a grant to an individual for travel, study, or similar purposes by the individual, unless the grant satisfies the advance approval requirement of IRC Section 4945(g).

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 IRC Section 4945(g)(3). As a result, expenditures you make under these procedures won't be taxable.

Description of your request

Your letter indicates you will operate operate D which will involve providing individual artists with grant funding to create original artwork, texts, research, or projects exploring contemporary art in context. The purpose of D is to consider B's life and work in the context of contemporary art making, and to share it through the perspectives of working artists by enabling the creation of new work inspired by B.

Under D, you will fund E artists per year, in the range of y dollars depending on the size of the proposed projects. You also currently anticipate that no more than z dollars will be awarded through D each year and that the grants will be made on a one-time basis. If you decide to renew a grant, the relevant procedures will be substantially similar to the original grant application procedures.

Eligible individuals will include artists with the potential to create original artwork, texts, research, or projects exploring contemporary art in context inspired by B's life and work.

Eligible individuals will first be nominated for consideration by a nominating committee who will publicize D by soliciting nominations for applications. The nominating committee will be composed of individuals chosen by you on the basis of their knowledge of contemporary art and will be artists, scholars, or other art experts, and may include previous grantees. Your directors, officers, or employees are ineligible to serve on the nominating committee. The members will be invited and selected by your board on an annual basis. Members of the nominating committee may not nominate members of their family or others whose receipt of a grant might advance the committee member's interests. Individuals on the nominating committee will each nominate one or more artists as candidates. You do not plan to place a limit on the annual number of nominations, but you anticipate receiving G or fewer.

Once nominated, you will inform the nominees to submit an application, which involves nominees providing work samples and an optional statement of interest.

Grantees will be chosen through a two-step, anonymous process by a separate selection committee composed of artists, scholars, or other art experts, and may include previous grantees, but members will not consist of your directors, officers, or employees. The members of the selection committee will be invited and selected by your board on an annual basis. Members of the selection committee may not nominate members of their family or others whose receipt of a grant might advance the committee member's interests. Your directors, officers, or employees are ineligible to serve on the selection committee.

Applicants will be evaluated by the selection committee using four main criteria consisting of:

- The quality of their work;
- Their consistent commitment to an artistic practice;
- Their previous involvement in historical research; and
- The potential influence the grant will have on their artistic endeavors.

Recipients will be selected on the basis of their demonstrated achievements to date, project or exhibit proposals, and commitment to projects, activities, and fields of study, and/or any other criteria that are consistent with your charitable and educational mission and the purposes of D. Ultimately, all grants will be subject to approval or ratification by your board of directors.

Recipients selected for D will be required to create new work inspired by B as well as be required to spend a minimum number of hours at your archive in C to inform their creative and research-based processes. Grantee research and resulting projects will be publicized and disseminated through your website, in furtherance of your charitable and educational purposes of helping the public to learn more about and better understand contemporary art in context.

You anticipate distributing funds directly to the recipients. You anticipate that at the end of any grant period, the recipient will be required to provide a report to you about their activities, progress and use of funds. If you provide grant funds covering a period that exceeds one-year, periodic reports providing such information will be required at least annually.

If a recipient does not account for all funds, any unaccounted funds must be returned to you for use in the furtherance of your exempt purposes. You will promptly investigate any apparent misuse of grant funds or failure to provide required reports. While a matter is being investigated, you will withhold further payments to

the grant recipient until you have determined that no part of a grant has been misused and until missing reports have been submitted. If you discover that funds have, in fact, been misused, you will take all reasonable and appropriate steps to secure the repayment of the diverted funds to you. In addition, if such a diversion occurs and you are making installment payments on a grant, you will withhold any further payments until you have received assurances from the recipient that future diversions will not occur and has required the grant recipient to take extraordinary precautions to prevent future diversions from occurring. All remaining funds will be used for your exempt purposes.

You will maintain the following records: (1) all information secured to evaluate the qualifications of potential grant recipient(s); (2) identification of recipients; (3) information on the amount and purpose of each grant; (4) the reports from the grant recipient(s) on their use of funds and any other information obtained in the course of supervising grants; and (5) any information obtained in connection with the investigation of jeopardized grants.

You represent that you will complete the following:

- Arrange to receive and review grantee reports annually and upon completion of the purpose for which the grant was awarded,
- Investigate diversion of funds from their intended purposes,
- Take all reasonable and appropriate steps to recover the diverted funds and ensure other grant funds held by a 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 diversion from occurring.

You also represent that you will:

- Maintain all records relating to individual grants including information obtained to evaluate grantees,
- Identify a grantee is a disqualified person,
- Establish the amount and purpose of each grant, and
- Establish that you undertook the supervision and investigation of grants described above.

Basis for our determination

IRC Section 4945 imposes excise taxes on the taxable expenditures of private foundations. 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 the following requirements of IRC Section 4945(g) is not a taxable expenditure.

- The foundation awards the grants 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 IRC Section 117(a) and is to be used for study at an educational organization described in IRC Section 170(b)(1)(A)(ii); or
 - A prize or award subject to the provisions of IRC 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 Regulation 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 only covers 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 a precedent.
- You cannot rely on the conclusions in this letter if the facts you provided have changed substantially. You must report any significant changes to your program to the IRS at:

Internal Revenue Service
Exempt Organizations Determinations
TE/GE Stop 31A Team 105
P.O. Box 12192
Covington, KY 41012-0192

- You can't award 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 further the purposes of your organization. You cannot award grants for a purpose that is inconsistent with IRC 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'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.

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 questions, you can contact the person shown at the top of this letter.

Sincerely,

Stephen A. Martin
Director, Exempt Organizations
Rulings and Agreements

Enclosures:
LETTER 437