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United States Senate

COMMITTEE ON FINANCE

WASHINGTON, DC 20510-6200

CHRIS CAMPBELL, STAFF DIRECTOR
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May 17, 2016

The Honorable John Koskinen
Commissioner
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

Dear Commissioner Koskinen:

As Chairman of the Senate Committee on Finance, I have the responsibility to conduct oversight of activity within the tax-exempt sector, including entities organized under Section 501(c)(3) of the Internal Revenue Code. Recently, media reports have raised allegations that some tax-exempt entities are operating museums that provide limited benefits to the public while enabling donors to reap substantial tax advantages.¹ To examine these claims, I sent a letter to a number of private museums late last year.² As I indicated in that letter, the general rule that governs private museums is that they must perform work that benefits the public. Beyond that, there is little clarity about what private museums must do to ensure that they continually meet the standards for tax-exemption.

My letter sought information about two broad questions. First, how does the museum make its art available to the public? And second, what privileges do founders and donors enjoy?

On the first point, the responses indicate that private museums operate in many fashions and provide a varying degree of public access to their art collections. I was pleased to learn that some private museums welcome as many as 500,000 visitors each year to view their artwork free of charge; some have steadily increased their attendance and are expanding their facilities to make collections more accessible to the public; others engage in robust loan programs that make their art available in museums worldwide; others have active grant programs that support artists and art education organizations; and others are exploring ways to make their collections viewable online. On the other hand, some of the museums I surveyed are not readily accessible by the general public. Of particular concern are lightly advertised museums that require reservations made weeks or months in advance, thereby effectively narrowing the visitor pool to a small group of patrons. I am also concerned by the short hours that some museums keep – some are

¹ See, e.g., Writing Off the Warhol Next Door, The New York Times, Jan. 11, 2015, BU1; Personal Art Collection or Tax-Exempt Museum? The Rules are Vague, Nonprofit Quarterly, Jan. 12, 2015.


² A copy of my letter, as well as a list of recipients, is enclosed.

open to the public for as little as 20 hours each week – and the extended periods that some museums are closed entirely to the public, as long as two or three months at a time.

On the second point, the responses indicate that many founding donors continue to play an active role in management and operations of the museum, although many have professional staff and are working to further professionalize their organizations. Some museums sit on land that is owned by the founding donor, and some museum buildings are adjacent to the donor's private residence, although one such museum reportedly sought and received a private letter ruling from IRS on the matter it remains unclear whether other museums sought similar guidance. Moreover, a number of the museums I surveyed obtained all, or most, of their collection from a single founding donor or family. In many cases, the founding donor continues to have an active role in management of the museum, either by serving on the board of directors or by serving as president of the museum. These factors alone are not cause for revoking tax-exempt status or imposing tax on self-dealing, but they do raise questions about the nature of the relationship between the donor and museum that perhaps merit further scrutiny.

Despite the good work that is being done by many private museums, I remain concerned that this area of our tax code is ripe for exploitation. The enclosed document summarizes the responses that I received from the 11 recipients of my letter. Once you have had a chance to review this summary, I ask that you respond and detail the IRS's views on private museums and the agency's efforts to ensure that private museums have sufficient guidance to conduct their operations.

Sincerely,

A handwritten signature in blue ink, reading "Orrin Hatch", is written over a horizontal line. The signature is stylized and cursive.

Orrin G. Hatch
Chairman

Summary of Responses Submitted by Private Museums to the Senate Committee on Finance³

Question 2(a): For the most recent five years, please provide: The museum's normal operating schedule, including periods when the museum was open to the public.

Question 2(b): For each year, the total number of hours that the museum was open to the public.

The responses to Questions 2(a) and (b) varied widely. Overall, the total number of hours open each week ranged from 20 to 48 hours, and the average number of hours open for each of the past five years ranged from 768 to 2,832.⁴ (Divided over 52 weeks, these values equate to a range of 15 hours per week to 55 hours per week.) Five museums indicated that they were open 1,070 hours per year or less, which equates to 21 hours per week in a 52-week year. One museum declined to provide the requested information, but noted that one of its museums in Vermont is "open seasonally, May through November, by appointment, free of charge." A number of the museums indicated that in addition to being open to the public, they also accommodated school groups and other private visitors. Additionally, some museums provided information about outdoor areas that had expanded access hours.

The responses indicated that some museums had highly irregular schedules. For example, one museum indicated that during 2015, it was open to the public on Thursday through Monday from 12 PM to 5 PM (a total of 25 hours per week). However, the museum was "closed for installation/construction" in 2015 from March 16 through April 25, and from May 19 through July 29, and was also closed for 10 holidays. As a result, the museum calculated that it was open to the public for 900 hours in 2015. Other museums similarly indicated that they were closed for weeks, or months, while installing new exhibits.

Question 2(c): For each year, the total number of visitors to the museum.

This question also elicited a broad range of responses. Four museums indicated that the average number of visitors for the past five years was 5,700 or less. One museum indicated that 456 people visited between October 2 and November 11, 2015. On the other extreme, one museum stated that it expected more than 500,000 visitors in 2015, and another stated that it averaged 35,000 visitors for the past five years, while another is in the midst of an expansion project to increase attendance in the future. One museum declined to provide the requested information,

³ Question 1, which asked for the Form 1023 that was submitted when the organization applied for tax-exempt status, is omitted.

⁴ Based on information about weekly operating schedules provided by the museums, it appears that some of the annual figures may be overstated. For example, a museum which indicated that it was open to the public from Tuesday through Thursday, 10 AM to 3 PM, and on Friday and Saturday, from 10 AM to 4 PM, which we calculate to be 1,404 hours per a 52-week year. In its response, the museum indicated that it was open for 2,860 hours in 2015.

but noted that and tours are “offered regularly three times per day every Saturday, Sunday, and Wednesday.”

A number of museums indicated that they relied extensively, and sometimes exclusively, on a reservation system. As one museum explained, “[t]he reservation system is offered both as a convenience to visitors and as a means of managing visitor flow to offer an opportunity for a contemplative visit where each guest can connect directly with the art.” Anecdotally, the Committee staff has determined that reservations to some of these museums must be made weeks, or sometimes months, in advance. Thus, a museum may wish to balance these limitations against the benefits cited above when considering a reservation-only system.

Finally, some museums discussed alternative ways available for the public to access their art. For example, one museum stated that “we are digitizing our entire collection so that it will be available online to the public, schools, and museum curators.”

Question 2(d): The amount charged, if any, to visit the museum (including a “suggested donation”).

Nine of the museums stated that they do not charge an admission fee. One museum charges an admission fee of \$10 for adults and \$5 for students over the age of 18. One other museum has a suggested donation of \$10 for adults, \$7 for senior citizens and students over 12. Access to that museum’s sculpture garden is free.

Question 3: If your museum is involved in partnerships or displays artwork in cooperation with other museums, please provide details of the partnership.

Seven museums indicated that they actively participate in partnerships to display artwork in cooperation with other museums. A number of these museums emphasized the role of these partnerships in achieving their museum’s overall mission and provided extensive information about the nature of the partnerships.

Question 4: If your museum loans artwork to other museums or foundations, please describe your loan program.

Ten museums indicated that they have an active loan program, or have loaned artwork in the past, to other institutions. The range among these museums was from a single loaned work to regular large-scale exhibitions shared with other museums. One museum indicated that it does not participate in a loan program because it does not own any of the art displayed in its museum.

Question 5: Describe how your museum obtained the artwork displayed in your collections and exhibitions. Please identify any donor who provided more than 5% of the artwork held by the museum and state their role in overseeing the museum and/or

foundation, if any (including any position as director, trustee, or otherwise overseeing operations).

Responses to this question varied widely, including the following:

- “The major portion of the artwork is from the [founding donor’s foundation]. Most recent works on display are gifts from artists and long-term loans.”
- One museum indicated that it does not own any artwork. Instead, it has a 99-year agreement to borrow art from a separate but related foundation which “acquired its artwork primarily through purchases.”
- One museum indicated that a majority of its artwork was purchased directly, although a small number of works were donated by the founder or the founder’s family foundation.
- One museum stated that “[t]he artwork primarily on display consists of the private collection of [the founders].”

Several museums indicated that donors who had provided more than 5% of the collection currently oversee museum operations, often by serving as President of the museum or by serving on the board.

Question 6: Provide your museum’s policy on accepting restricted gifts. Has your museum ever loaned donated artwork back to the donor?

None of the museums indicated that they have accepted restricted gifts, but only a few have a policy against doing so. None of the museums indicated that they ever loaned donated artwork back to the donor.

Based on the responses to question 5, it appears that some founders of private museums retain control of artwork displayed in the museum. However, in each of those cases, title of the artwork has not passed to the museum; instead, it is either retained by the founder or held by a separate foundation.

Question 7: Describe what methods your museum uses to value donated artwork, and state whether your museum provides valuation information to donors.

Nine of the museums indicated that they use outside professional appraisers to value donated artwork for the museum’s own documentation. These museums also indicated that they do not provide valuation information to donors, who must rely on third-party appraisals to obtain the value of donated art. Two of the museums stated that they have not accepted any donations.

Question 8: Provide the following information about the physical location of the museum:

- (a) The legal entity that holds title to the property and museum building.

- (b) If the property or building is rented, the legal entity to which the museum pays rent.
- (c) To the best of your knowledge, whether property tax has been paid on museum property.
- (d) Whether directors, trustees, or donors have physical access to the museum while it is closed to the public, and if so, whether the museum is reimbursed for this access.

Responses to this Questions 8(a), (b) and (c) described a variety of arrangements, including the following:

- Museum property is owned by museum, and is exempt from property taxes.
- Museum property is owned by municipality, the museum pays rent, and the property is tax-exempt.
- Museum property is owned by a related foundation, the museum pays no rent, and property taxes are paid by the related foundation.
- Museum owns its building. The property on which the museum sits is owned by a LLC established by the founder, and the museum pays no rent.
- Museum property is owned partially by museum and partially by museum's founder. The portion of property owned by the museum's founder is leased to the museum rent-free pursuant to a 99-year lease.
- One museum indicated that it does not own property or a building, but declined to provide any other information about the facility in which the museum operates, which is located in Vermont.

In response to Question 8(d), several museums indicated that their directors, trustees, and donors have physical access to the museum outside of normal operating hours. Some of these personnel were identified as donors who provided a substantial portion of the museum's collection, or in some cases, established the museum. These museums uniformly asserted that such access was solely for purposes related to the museums' operations (such as changing exhibits, office work, etc.) and not for personal purposes.

Question 9: Please provide information about any grants awarded by your museum during the past five years.

Seven museums indicated that they have awarded grants. Among these museums, there was a wide range of grant activity. One museum indicated that it had given a single grant during the past five years; others indicated that they gave an a recurring grant each year (such as a visiting scholar program or a prize); and one museum indicated that it awarded grants to more than 75 tax-exempt organizations during the past five years which totaled more than \$3 million.