

# Private Museums Targeted by Senate Finance Committee

01.19.16 | Linda J. Rosenthal, JD



The tax-exempt status of certain high-profile private museums have become the target of an inquiry by the Senate Finance Committee. The issue is whether they are providing enough *public* benefit to justify the benefits of exemption under Section 501(c)(3) of the Internal Revenue Code and the related charitable deductions.

In November 2015, Finance Committee Chairman Senator Orrin G. Hatch (R-UT) sent letters to a number of “small galleries” around the nation. The information sought includes items like identification of directors, donations, collection valuations, loans of artwork, and visiting hours that the premises are open to the general public.

GOP staffers on the Finance Committee indicated that the questions are part of a larger effort by Senator Hatch to reevaluate several categories of institutions that have long enjoyed the substantial tax benefits of Section 501(c)(3) status. The list includes private universities and organizations that call themselves museums.

According to Senator Hatch, “[t]ax-exempt museums should focus on providing a public good and not the art of skirting around the tax code.” He added: “While more information is needed to ensure compliance with the tax code, one thing is clear: Under the law, these organizations have a duty to promote the public interest, not those of well-off benefactors, plain and simple.” Acknowledging that “charitable organizations have an important role in promoting good in our society,” he nevertheless wonders whether “some private foundations are operating museums that offer minimal benefit to the public while enabling donors to reap substantial tax advantages.”

## *What Prompted the Concern?*

In a lengthy, detailed feature article earlier in 2015 in the New York Times, questions were raised about so-called private museums “created by wealthy

art collectors, sometimes in their own backyards.” They apply for and receive 501(c)(3) tax exemptions, but then operate in a manner more like a personal gallery – having only limited public access, closing for months at a time, and avoiding signs and publicity.

One such institution was featured in that earlier article:

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*The Brant Foundation Art Study Center – a picturesque gallery space inside a converted 1902 stone barn – is just down the road from the Greenwich, Conn., estate of its creator, Peter M. Brant, the newsprint magnate and avid art collector. There are no identifying signs for the center, whether at the turnoff on North Street, at the security gate or on the building itself, though the location is known to the art-world cognoscenti and celebrities who attend the twice-a-year gala openings, held at the private polo club next door that Mr. Brant also founded. Visits to the center itself are by appointment only.*

The art market is very hot, and many high-net-worth people see that transferring their personal art collections to private foundations or “museums” that they create could be a way to try to reduce their tax liability.

#### *Targets of Finance Committee Letters*

Among the recipients of the Finance Committee’s inquiry letters in November was the Brant Foundation Art Study Center featured in the New York Times feature piece. Another target is the Glenstone Museum in Potomac, Maryland, featured as well in that New York Times article in January 2015. Like the Brandt museum, the Glenstone has limited public access by appointment only and is located adjacent to the wealthy art collectors’ home. A letter was sent as well to Eli and Edythe Broad’s new \$140 million art museum in downtown Los Angeles, which doesn’t fit into this same category of small, out-of-the-way private museums.

#### *Conclusion*

In every presidential election year, there is some lip-service given to tax policy reevaluation. Whether this is part of that cyclical lip-service to revamping the tax code remains to be seen.

Although the IRS considers this a valid issue – that is, a question of meeting the organization and operational test of section 501(c)(3) and not violating the Private Benefit Rule – the rules are somewhat vague and imprecise.

Nevertheless, the explosion of these “private museums” in the last several

years may spur action by the Internal Revenue Service or by Congress.