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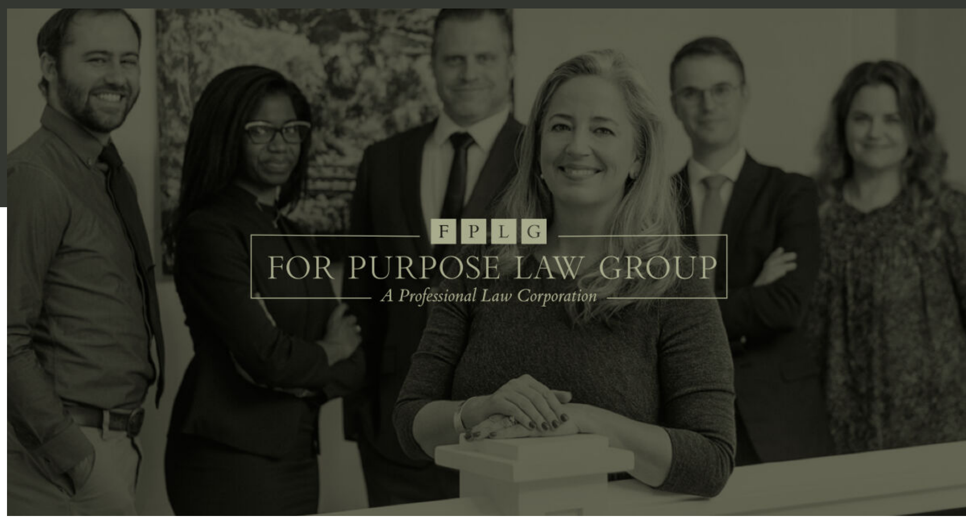
Senate Review of Private Museums Ends With a Whimper

07.14.16 | Linda J. Rosenthal, JD



Early in 2015, the *New York Times* published a lengthy article about the proliferation of so-called "private museums." The feature piece begins with a description of The Brant Foundation Art Study Center –

> *a picturesque gallery space inside a converted 1902 stone barn — … 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 Study Center is operated by Mr. Brant's nonprofit private foundation. There are extensive tax benefits available to him including a deduction for the "full market value of any art, cash and stocks" donated," even though the Center is "just a quick stroll" away from his living room.
The article included several other sites like this.

Senate Finance Committee Takes An Interest

This story caught the attention of the Senate Finance Committee Chairman, Orrin Hatch (R-UT), who – later in the year – launched an inquiry. We reported on this development in "Private Museums Targeted by Senate Finance Committee."

Letters were sent by the Finance Committee to a number of foundation-sponsored museums, including some named in the *Times* article. The lawmakers 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?" Specifically, they inquired about the identity of directors, the valuation of art collections, and details about how and when the premises are open to the general public, among other factors.

"Under the law," according to Chairman Hatch, "these organizations have a duty to promote the public interest, not those of well-off benefactors, plain and simple." The central focus of this Finance Committee inquiry was whether "some private foundations are operating museums that offer minimal benefit to the public while enabling donors to reap substantial tax advantages." Lawmakers wanted to know whether these organizations "provide sufficient *public* benefit to warrant continued 501(c)(3) tax exemption and all of the related benefits that accrue to the founders/donors.

Senate Committee staffers told reporters that this investigation is part of a larger effort 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 along with organizations that call themselves museums.

Museum Responses are Inconclusive

In early June 2016, the Senate Finance Committee announced that the responses from the organizations had been received and reviewed. Unfortunately, the results are inconclusive; there are no clear commonalities or trends.

This Finance Committee document includes the full text of a letter from Chairman Hatch to John Koskinen, Commissioner of Internal Revenue, along with a multi-page summary of the answers to the questions posed to the target foundations.

"The responses were all over the map, indicating 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.*

However,

> *some of the museums … 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 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.*

As to the second question, "the responses indicate" that "many of the donors continue to play an active role, … and some sit on land that is owned by the founding donor, [sometimes] adjacent to the donor's private residence." Also, "a number of the museums … 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," wrote Senator Hatch, "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."

Senator Hatch added: "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."

Conclusion

Senator Hatch ends his letter to Commissioner Koskinen with a request that he "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."

With that toss of the hot potato back into the lap of the Internal Revenue Service, the Senate Finance Committee has concluded its investigation of private museums.