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Department of the Treasury

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CC:TEGE:EOEG:EO2

PLR-110187-18

Date:

September 12, 2018

LEGEND

Foundation =

Grantee =

X =

Y =

Z =

Dear _____ :

This letter responds to a letter submitted on your behalf from your authorized representative dated March 20, 2018, requesting a ruling as to whether your grant to Grantee will be treated as a qualifying distribution under § 4942(g)(1)(A) of the Internal Revenue Code of 1986, as amended (hereafter the "Code"), and whether your grant to Grantee will not constitute a taxable expenditure under §§ 4945(d)(4) or (5) of the Code.¹

FACTS

Based on the documents and representations submitted on behalf of Foundation, the relevant facts on which Foundation's request for rulings is based are as follows:

Foundation is a tax-exempt organization described under § 501(c)(3) and is classified as a private foundation under § 509(a).

¹ All "§" and "section" references are to the Internal Revenue Code of 1986, as amended, unless otherwise stated.

Grantee is a tax-exempt organization described under § 501(c)(3) and is classified under § 509(a)(3) as a Type I supporting organization pursuant to § 509(a)(3)(B)(i). Grantee's charitable purposes include (i) advancing the public understanding of religion by means of informative media for reporters, editors, other members of the secular news media and the general public, and (ii) facilitating, informing and improving religious literacy and encouraging public discourse about religion in a neutral and informative way without endorsing or promoting any particular religion, sect, denomination, practice or point of view. Grantee is not an organization controlled by Foundation and is not a disqualified person or controlled by a disqualified person.

Foundation proposes to make a grant to Grantee to assist Grantee in a global religion journalism project (hereafter the "Project") to provide comprehensive coverage of religion as a vital and powerful cultural force and to create compelling content in all formats, all of which will further Grantee's charitable purpose. Grantee intends to undertake the Project in collaboration with X, Y, and Z.

Grantee has represented to Foundation that it conducts its publishing and content distribution operations through X. X is a nonprofit limited liability company that is a wholly-owned subsidiary of Grantee and is treated as a disregarded entity for federal income tax purposes. The purposes of X include advancing public understanding of religion and educating the public about religion through online publications and other media, facilitating information and public discourse about religion without favoring any religion or point of view, and promoting the charitable purposes of Grantee.

Grantee has represented to Foundation that it will collaborate with Y on the Project. Y is a not-for-profit corporation and taxed as a subchapter "C" corporation for federal income tax purposes. As a not-for-profit corporation, Y is prohibited from paying dividends or distributing any part of its income or profits to its members, directors, or officers. Y gathers and distributes news information nationally and internationally.

Grantee has represented to Foundation that it will collaborate with Z on the Project. Z is a tax-exempt organization described under § 501(c)(3) and is classified as a public charity. Z serves as a link between the news industry and academia by making available university research and commentary to a mass-media audience. Z has an existing relationship with Y under which Y distributes and markets Z's articles to readers throughout the United States.

Grantee has represented to Foundation that the key objective of the Project is to help the public understand more deeply and accurately the role that religion plays, both good and bad, in the daily experiences and attitudes of individuals, families and communities, and in the development of values that define the broader society and culture. Through the intended collaboration in the Project with X, Y, and Z, Grantee will coordinate and

support the creation of a joint religion news desk of editors and field journalists and others who will produce stories on religion that are fair, accurate, balanced and objective and that feature, among other things, portrayals of religious practices, principles and dynamics from diverse religious traditions. Grantee intends to use Y's global footprint and news experience, X's experience in reporting religion-based news, which will enable more in-depth reporting on specific topics, and Z's subject matter experts' unique scholarly and academic viewpoint to ensure the objective and educational nature of the content generated through the Project.

Foundation proposes to make the grant exclusively to further the charitable purposes of the Project. Grantee will have sole discretion and control over the use of the grant funds in selecting contractors or sub-grantees in connection with the Project and its use of grant funds and will make such selections completely independently of Foundation. Foundation will not be a party to Grantee's contracts or sub-grants in connection with the Project. Moreover, Foundation has not earmarked any of the grant funds to or for the benefit of any organization other than Grantee, nor will it do so.

Grantee has assured Foundation that any contracts or sub-grants executed in connection with the Project will reflect terms and conditions consistent with the following features:

1. The grant funds will be used exclusively to further Grantee's charitable purpose of (i) advancing the public understanding of religion by means of informative media resources, (ii) providing programs for reporters, editors, other members of the secular news media and the general public, and (iii) facilitating, informing and improving religious literacy and encouraging public discourse about religion in a neutral and informative way without endorsing or promoting any particular religion, sect, denomination, practice, or point of view. No aspect of the Project may contradict Grantee's charitable purpose or adversely affect Grantee's tax-exempt status pursuant to § 501(c)(3).

2. Grantee will maintain legal control and possession of the grant funds to engage contractors and sub-grantees to perform services in connection with the Project, which contractors and sub-grantees will be selected by Grantee in its sole discretion.

3. University scholars, educators and others will regularly develop and produce scholarship and academic perspectives for general publication, which will ensure that the content of material produced and published with the support of grant funds is religious and educational in nature and not selected solely on the basis of perceived mass appeal. Similarly, editors, producers, reporters, journalists, and others working on the Project will ensure that the content of material produced and published with the support of the grant is religious and educational in nature and not selected solely on the basis of perceived mass appeal.

4. The content produced with the grant funds will be distributed using methods identified by the Project participants that are distinguishable from ordinary commercial publishing practices, such as charging subscription rates that reflect reductions relative to regular rates; relying on sources of revenue other than subscriptions, sales of individual copies, and advertising; publishing content that stimulates the religious interests of readers to contribute to the advancement of religion; limiting the solicitations for the purchase of materials through commercial means such as mailing lists, radio, and newspaper advertising; publishing certain materials at no cost to the reader; engaging in activities other than the publication and distribution of literature; and limiting the accumulation of net revenues from sales activities and using excess net revenues on charitable programs.

5. Grantee will be entitled to review all content produced with the grant funds to ensure that such content is limited to matters relevant to religious inquiry, exploration and thought and does not include content based solely on perceived mass appeal. Grantee will have the right reasonably to reject content to the extent that it does not meet such standards.

6. The grant funds may not be used to carry on propaganda or otherwise attempt to influence legislation; to influence the outcome of any specific public election or to carry on any voter registration drive; or to undertake any activity that is not within Grantee's charitable purposes pursuant to § 170(c)(2)(B).

7. Each contractor or sub-grantee will certify to Grantee that personnel hired or engaged to provide services using the grant funds will have requisite experience, as appropriate, with respect to religion news and that such services will exclusively further the charitable purposes of the Project.

8. Grantee will have access to reports and financial information to ensure that it may appropriately monitor the use of grant funds in connection with the Project. Grantee will have the right to review all expenses relating to the Project and to decline any proposed expenses (or decline to make reimbursement for any incurred expenses) that do not, in Grantee's reasonable judgment, further Grantee's charitable purposes. Alternatively, Grantee may require a contractor or sub-grantee to certify to Grantee that all expenses for which reimbursement has been requested have been incurred solely to further the Project.

9. Grantee will have the right reasonably to grant or withhold approval of (i) the pricing of content produced using grant funds, (ii) agreements with marketing companies in connection with such content, and (iii) the manner of distributing such content to ensure that such manner of distribution is distinguishable from ordinary commercial publishing practices.

10. To the extent that revenue generated by the Project is allocated between Grantee and Y or any other entity not exempt under § 501(c)(3), such allocation shall be based solely on gross revenue or similar terms designed to ensure that no part of Grantee's net earnings inures to the benefit of a private shareholder or individual.

11. Content produced in connection with the Project generally will be owned by the party that produced such content; provided, however, that content jointly produced by Grantee (herein including X) and another party may be jointly owned by Grantee and such party. Furthermore, Grantee will have a perpetual and non-transferable royalty-free license to use all content produced by the other party for Grantee's internal reference material, for use in Grant's publications, or as part of a larger work that includes content that Grantee has newly created. Grantee expects that reciprocal licensing rights will be given to Y or other parties with respect to content produced by Grantee, but in connection with any such license, Grantee will receive regular reports regarding the use of content pursuant to such license, and Y or the other party will agree to revisit and revise the terms of such license if necessary to ensure that such use is consistent with Grantee's obligations pursuant to § 501(c)(3).

RULINGS REQUESTED

Foundation requests that the Service issue rulings as follows:

1. Foundation's grant will constitute a qualifying distribution under § 4942(g)(1)(A); and
2. Foundation's grant will not constitute a taxable expenditure under §§ 4945(d)(4) or (5).

LAW

Section 170(c)(2)(B) defines charitable contribution to mean a contribution or gift to or for the use of a corporation, trust, or community chest, fund, or foundation organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals.

Section 501(c)(3) defines organizations exempt from taxation to include a foundation organized and operated exclusively for religious, charitable, scientific, or educational purposes, or for the prevention of cruelty to children or animals, provided no part of the net earnings of which inures to the benefit of any private shareholder or individual, no

substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation (except as otherwise provided in subsection (h)), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.

Treas. Reg. § 1.501(c)(3)-1(d)(2) provides that the word charitable includes the advancement of religion, advancement of education or science, and the promotion of social welfare by organizations designed to accomplish any of the purposes described in the regulation.

Treas. Reg. § 1.501(c)(3)-1(d)(3)(i)(b) states that the term educational includes instruction of the public on subjects useful to the individual and beneficial to the community.

Section 4942(a) generally imposes a tax on the undistributed income of a private foundation (other than an operating foundation under § 4942(j)(3)) for any taxable year, that has not been distributed before the first day of the second (or any succeeding) taxable year following such taxable year.

Section 4942(c) defines undistributed income for any taxable year as the amount by which the distributable amount for such taxable year exceeds the qualifying distributions made out of such distributable amount for such taxable year.

Section 4942(g)(1) defines qualifying distributions as any amount paid to accomplish one or more [charitable, religious, or educational, or other enumerated exempt] purposes described in § 170(c)(2)(B), other than any contribution to (i) an organization controlled by the foundation or one or more disqualified persons, or (ii) a private non-operating foundation, unless the amount paid satisfies the requirements of § 4942(g)(3).

Section 4945(a) imposes an excise tax on each taxable expenditure incurred by a private foundation.

Section 4945(d)(4) provides that the term “taxable expenditure” includes a grant paid to an organization unless the grantee is either a public charity described in § 509(a)(1), (2), or (3) (other than certain supporting organizations described in § 4942(g)(4)(A)(i) or (ii)) or an exempt operating foundation described in § 4940(d)(2), or unless the grantor exercises expenditure responsibility over the grant pursuant to § 4945(h).

Section 4945(d)(5) provides that the term “taxable expenditure” means any amount paid or incurred by a private foundation for any purpose other than one specified in § 170(c)(2)(B).

Treas. Reg. § 53.4945-5(a)(6)(i) provides that where a grantee of a private foundation uses grant funds to make a subsequent payment to a “secondary grantee,” such subsequent payment will not be treated as a grant by the private foundation to the “secondary grantee if the foundation does not earmark the use of the grant for any named secondary grantee and there does not exist an agreement, oral or written, whereby such grantor foundation may cause the selection of the secondary grantee by the [original grantee].” Even where the private foundation “has reason to believe” that a secondary grantee would benefit from a grant, the foundation will not be deemed to have made a grant to such secondary grantee “so long as the original grantee organization exercises control, in fact, over the selection process and actually makes the selection completely independently of the private foundation.”

Treas. Reg. § 53.4945-6(b)(1)(v) provides that qualifying distributions, as defined in § 4942(g), ordinarily will not be treated as taxable expenditures for purposes of § 4945(d)(5).

Revenue Ruling 66-147, 1966-1 C.B. 137, holds that an organization qualifies for exemption from Federal income tax under § 501(c)(3) of Code where it is formed to survey scientific and medical literature published throughout the world and to prepare and distribute free of charge abstracts taken from such literature.

Revenue Ruling 67-4, 1967-1 C.B. 121, holds that an organization formed for the purpose of encouraging basic research in specific types of physical and mental disorders, to improve educational procedures for teaching those afflicted with such disorders, and to disseminate educational information about such disorders, by the publication of a journal containing current technical literature relating to these disorders qualifies for exemption from Federal income tax under § 501(c)(3). The Service stated that the publishing of scientific and medical literature qualify for exemption from Federal income tax under § 501(c)(3) if (1) the content of the publication is educational, (2) the preparation of material follows methods generally accepted as ‘educational’ in character, (3) the distribution of the materials is necessary or valuable in achieving the organization's educational and scientific purposes, and (4) the manner in which the distribution is accomplished is distinguishable from ordinary commercial publishing practices.

Revenue Ruling 68-306, 1968-1 C.B. 257, holds that a nonprofit organization that publishes a newspaper primarily devoted to news, articles, and editorials relating to church and religious matters qualifies for exemption from Federal income tax under § 501(c)(3). The ruling held that by disseminating information about church activities and by publishing inspirational articles, the organization improves communication between the churches and their members and stimulates the religious interests of its readers. Therefore, the organization is accomplishing a charitable purpose by contributing to the

advancement of religion. The Service held that the organization is not operated in an ordinary commercial manner: subscriptions are procured through the cooperation and effort of individual churches and church-associated groups. Although the organization receives substantial income from the sale of subscriptions and advertising space, such revenue does not cover its costs of operations. It must depend upon contributions to make up the difference.

Revenue Ruling 68-307, 1968-1 C.B. 258, holds that a nonprofit organization formed to help the National Park Service improve and expand its educational and scientific programs qualifies for exemption from Federal income tax under § 501(c)(3). The organization's activities are directed toward furthering the educational and scientific programs of the Park Service within a specific park. It prepares, publishes, and distributes literature concerning the phenomena and history of the park. This literature is sold at a nominal price at visitor centers by the park personnel. In addition, the organization cooperates with the Park Service in acquiring material and equipment suitable for use in scientific and educational work in the park. It also assists in developing the park library and museum, in preserving historic objects, and, generally, in furthering the educational and scientific aims of the Park Service.

Revenue Ruling 70-129, 1970-1 C.B. 128, holds that an organization formed to support research in anthropology by manufacturing quality cast reproductions of anthropological specimens which are sold to scholars and educational institutions in a noncommercial manner qualifies for exemption under § 501(c)(3). The Service noted that the distribution of reproductions in this case accomplishes the dissemination of important educational and scientific information in the same manner as the scientific abstracts described in Revenue Ruling 66-147, supra. Furthermore, under the facts in this case, the charging of fees for the reproductions does not preclude qualification under § 501(c)(3) because the manner in which the distribution is accomplished, like that in Revenue Ruling 67-4, supra, is distinguishable from ordinary commercial practices.

ANALYSIS

Issue 1:

Section 4942(g)(1)(A) and Treas. Reg. Sec. 53.4942(a)-3(a)(2)(i) provide, in part, that the term “qualifying distribution” means any amount paid to accomplish one or more purposes described in § 170(c)(1) or (2)(B), other than any contribution to (i) an organization controlled by the foundation or one or more disqualified persons, or (ii) a private non-operating foundation, unless the amount paid satisfies the requirements of § 4942(g)(3).

Foundation has represented that Grantee is not an organization controlled by Foundation, is not a disqualified person or controlled by a disqualified person, and is not a private non-operating foundation. Thus, if the grant is paid to accomplish one or more purposes described in § 170(c)(1) or (2)(B), it will be a qualifying distribution.

Section 170(c)(2)(B) lists the following purposes: “religious, charitable, scientific, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals.” These purposes are the same as the purposes listed in § 501(c)(3). Thus, a grant by a private foundation to another organization described in § 501(c)(3) ordinarily is an amount paid to accomplish a purpose described in § 170(c)(2)(B).

The Project is a global religious journalism project in which religious information is published to advance the public’s understanding of religion. The project intends to produce fair, accurate and balanced objective stories that explain the religious convictions, practices, and dynamics behind news events. Foundation has represented that the expected content also will offer unique analyses from experts in the field. In this way, the Project will further charitable purposes by advancing religion as contemplated in Treas. Reg. § 1.501(c)(3)-1(d)(2). The Project is also educational as it will increase people’s understanding of various religions and the role that religion plays in society. The Project is educational as the term “education” is defined under Treas. Reg. § 1.501(c)(3)-1(d)(3)(i)(b), and similarly as the term is used to describe the religious organization in Rev. Rul. 68-306, because the content generated by the Project will inform the public on subjects useful to the individual and beneficial to the community.

The Project will prepare the religious and educational content in a manner similar to the organizations described in Rev. Rul. 66-147, and Rev. Rul. 67-4. Grantee will rely on staff members and contributing authors who are experts in the fields of religion and religious-news gathering. This method should ensure that the preparation of the content will conform to non-commercial educational purposes.

The content produced through the Project will be publicly distributed in a noncommercial manner to achieve Grantee’s charitable purposes. The material produced through the Project will be distributed through websites, networks, training workshops and other programs for media professionals, organizations, and the general public as the means of informing the public on subjects that are useful to individuals and beneficial to the community as contemplated by Treas. Reg. § 1.501(c)(3)-1(d)(3)(i)(b). Moreover, the material will be distributed in a noncommercial manner so that the publications further charitable purposes described in § 501(c)(3) and § 170(c)(2)(B). Specifically, during the period of the grant, the Project will be supported by the grant and not wholly through subscriptions or advertising. Some material will be published at no cost to the reader. Additionally, Project materials will remain freely available to Grantee via a perpetual,

royalty-free license, even though Project materials were produced through collaboration with others. As such, similar to the organizations described in Rev. Rul. 68-307 and Rev. Rul. 70-129, Grantee's manner of distribution of Project material is distinct from those of a commercial enterprise.

Issue 2:

Section 4945(a) imposes an excise tax on each taxable expenditure incurred by a private foundation. Section 4945(d)(4) defines "taxable expenditure" to include a grant paid to an organization unless the grantee is described in § 509(a)(1), (2), or (3) (other than certain supporting organizations described in § 4942(g)(4)(A)(i) or (ii)), the grantee is an exempt operating foundation described in § 4940(d)(2), or the grantor exercises expenditure responsibility over the grant pursuant to § 4945(h). Here, Foundation represented that Grantee is classified as a Type I supporting organization described in § 509(a)(3) and not in § 4942(g)(4)(A)(i) or (ii). As such, the grant to Grantee will not be a taxable expenditure under § 4945(d)(4).

Section 4945(d)(5) provides that the term "taxable expenditure" means any amount paid or incurred by a private foundation for any purpose other than one specified in § 170(c)(2)(B). Here, as stated above, Foundation has represented that the grant is being paid to Grantee to accomplish the Project, which will be a charitable activity as described in §§ 170(c)(2)(B) and 501(c)(3). Furthermore, although Grantee will collaborate with X, Y, and Z, the grant is not earmarked for X, Y, or Z, and as described under Treas. Reg. § 53.4945-5(a)(6)(i), the grant will only be classified as a grant to Grantee. As such, the grant to Grantee will not be a taxable expenditure under § 4945(d)(5).

CONCLUSION

1. Foundation's grant will constitute a qualifying distribution under § 4942(g)(1)(A); and
2. Foundation's grant will not constitute a taxable expenditure under §§ 4945(d)(4) or (5).

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an individual with authority to bind the taxpayer and upon the understanding that there will be no material changes in the facts. This office has not verified any of the material submitted in support of the request for ruling, and such material is subject to verification on examination. The Associate office will revoke or modify a letter ruling and apply the revocation retroactively if there has been a misstatement or omission of controlling facts; the facts at the time of the transaction are materially different from the

controlling facts on which the ruling was based; or, in the case of a transaction involving a continuing action or series of actions, the controlling facts change during the course of the transaction. See Rev. Proc. 2018-1, § 11.05.

No ruling is granted as to whether Taxpayer qualifies as an organization described in § 501(c)(3) and/or § 509(a)/§ 170(b)(1)(A), except as expressly provided above, and no opinion is expressed or implied concerning the federal income tax consequences of any other aspects of any transaction or item of income described in this letter ruling.

This letter ruling is directed only to the taxpayer that requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

If you have any questions about this ruling, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

Andrew F. Megosh, Jr.
Senior Tax Law Specialist
Exempt Organizations Branch 2
(Tax Exempt & Government Entities)

cc: