

Private Foundations Bulletin

The Private Foundation and Its Artwork

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For private foundations with art collections or those anticipating receipt of artwork, valuation, donation and preservation are key areas of consideration. In this article, we aim to provide some of the more relevant considerations for private foundations with respect to artwork.

Valuation

The first consideration private foundations should make is whether such artwork will be held for charitable or non-charitable use purposes. This differentiation is critical in determining the private foundation's annual distributable amount, and consequently, how often the artwork requires valuation. The Internal Revenue Service (IRS) provides the following guidance on determining whether an asset is deemed as used (or held for use) directly in carrying out the foundation's exempt purpose:

Held for Charitable Use:

An asset is deemed used (or held for use) directly in carrying out the foundation's exempt purpose only if the asset is actually used by the foundation in carrying out its charitable, educational, or other similar (IRC 170(c)(2)(B)) purpose which gives rise to the exempt status of the foundation, or if the foundation owns the asset and establishes to the satisfaction of the IRS that its immediate use for such exempt purpose is not practical (based on the facts and circumstances of the particular case) and that definite plans exist to commence such use within a reasonable period of time.

No additional valuation is required other than the valuation at the date of donation (or not earlier than 60 days prior to the date of contribution of appraised property) as the artwork will not be included in determining the private foundation's annual distributable amount. This valuation is typically provided by the donor upon contributing the artwork; as any donation of artwork, to be deductible as a contribution to a qualified charity, must be supported by a written appraisal from a qualified and reputable source, unless the deduction is \$5,000 or less.

Non-charitable Use:

An asset considered to be a non-charitable use asset must be valued on an annual basis. For the year of donation, as a practical matter, the appraised value at the date of contribution (or not earlier than 60 days before the date of contribution) often becomes the date and value used for assessment purposes. Similarly, for contributions received under an estate plan after the donor's death, the artwork would be valued at the date of death. Estate appraisals are acceptable valuations.

For years thereafter, non-charitable use artwork must be valued as of the same date as the original valuation but may be made by private foundation employees or by any other person even if that person is a disqualified person (as defined by the IRS). This is important for private foundations with large amounts of artwork which may incur significant appraisal fees if a valuation was to be undertaken each year. In addition, for private foundations with a significant collection of a particular artist, management should investigate securing a blockage discount on the value of the collection. A blockage discount is a reduction to the fair market value of similar assets held in bulk to reflect the extent to which the selling price would be depressed were the assets to be sold at one time.

The fair value must be included in calculating the annual distributable amount for the private foundation.

Grantmaking and Charitable Distributions

Certain private foundations are making grants in the form of personal property, such as artwork. Grants of artwork [to another charity] should be valued under the same rules applicable to a donor contributing artwork to a private foundation. The artwork should be appraised and supported by a written appraisal from a qualified and reputable source unless the deduction is \$5,000 or less. Additionally, a written acknowledgement letter should be obtained from the grant recipient.

Preservation

For those private foundations seeking to preserve their charitable-use artwork collection, direct expenditures, such as the amounts paid for maintenance, storage and insurance, are deemed to be qualifying distributions. Direct expenses incurred to maintain non-charitable use artwork can be deducted against a private foundation's investment income

Due Diligence

A private foundation should maintain, or ensure, that a reasonable and appropriate due diligence process is in place regarding artwork or potential receipt of artwork. This process should be right sized to the needs of the private foundation and those charged with governance. Preparation and anticipation are vital to private foundations in conducting present activities, assessing future considerations and staying ahead of industry trends.

Contact Us

We welcome the opportunity to answer any questions you may have related to this topic or any other accounting, audit, tax or advisory matters relative to private foundations. Please call 212.286.2600 or email any of the Private Foundation Services team members below:

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