THE PUBLIC POLICY OF PRIVATE SUPPORT

Current American arts policy makes much of the role of private sector support for cultural activities: Most arts agencies say that their funds are intended to complement contributions from individuals, businesses, foundations and the like.

Though many neighborhood arts groups do quite well with "private sector resources" (including volunteers and in-kind help), public subsidy and public agency contracts have played more important roles in the neighborhood arts movement. Community development programs, job development schemes like CETA, and public arts agency support have meant a lot to groups which serve communities whose members don't have "disposable" income to contribute. For these neighborhood arts groups, private support has played a subsidiary role; in fact, the IRS law encourages this by making tax-deductible contributions far more attractive and rewarding for the rich, who are more likely to make their gifts to high arts organizations.

The issue of private support was an important one at the National Partnership Meeting we covered in NAPNOC notes #2. What follows is taken from the paper we promised then on the federal tax laws that its author Hamish Sandison calls the "linchpin" of private support for charitable organizations. Sandison first briefly discusses what organizations qualify for favorable tax treatment for their donors, then proceeds to consider what kinds of contributions -- and contributors -- are favored by the present system.

The final section of the paper discusses the question of how tax deductions are computed. This can be important for neighborhood arts people who are working on efforts to encourage increased private giving.

Sandison, presently an associate at the law firm of Arnold & Porter in Washington, DC, was a founding member and director of Bay Area Lawyers for the Arts in San Francisco and is presently Board President of the British American Arts Association.

This article is excerpted from a longer paper complete with Revenue Code and case citations prepared for NAPNOC notes. The full version discusses additional issues such as limitations on giving and donations of real property as opposed to cash. NAPNOC members and subscribers who wish to review the entire paper should write for a free copy.

Tax Deductibility and the Arts

Hamish R. Sandison 1980

"JOHNSON. 'No, Sir: to act from pure benevolence is not possible for finite beings. Human benevolence is mingled with vanity, interest, or some other motive.'" J. Boswell, Life of Johnson, 750 (R.W. Chapman ed. 1953).

The tax deduction for charitable contributions has been a feature of U.S. income tax law since 1917. Charities themselves have been exempt from federal income taxation ever since the first income tax statute of 1913. Today, tax deductibility is the linchpin of private support for charitable activities -- especially the arts.

A study conducted by Professor Martin Feldstein, of Harvard University, for the Commission on Private Philanthropy and Publications reveals that:

In NAPNOC notes #3, we incorrectly listed the NCEED; it should be the National Congress for Community Economic Development, not Conference.

The Manhattan Publishing Company, American distributor of the Council of Europe's cultural policy documents reviewed in NAPNOC notes #2, has a new address and phone number for publications orders:

Manhattan Publishing Company
P.O. Box 650
Croton, NY 10520
(914)271-5194

Their editorial offices are still at the Lafayette St. address we gave, so orders sent there will be forwarded.

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NAPNOC notes is edited by NAPNOC Co-Directors Don Adams and Arlene Goldbard.
lic Needs (the "Filer" Commission) found that the estimated total of $17.3 billion in individual charitable giving for 1970 would have been reduced by an average of 26 percent if there were no charitable deduction. Professor Feldstein estimated that the reduction in giving by taxpayers in the $100,000 to $500,000 income bracket would have been an even greater 75 percent. This reduction in charitable giving would affect arts and cultural institutions most, since he found that they receive a larger share of giving by higher income donors than other charities...

I. INCOME TAX TREATMENT OF CHARITIES

Charities are exempt from federal income taxation by virtue of section 501(a) of the Internal Revenue Code ("Code"). For this reason, they are often referred to as "tax exempt" organizations. However, there are many tax exempt organizations that are not charities and to which contributions are not tax deductible. These include social welfare organizations, business leagues, labor organizations, social clubs, and others. The term "charities" is therefore more accurate to describe those organizations that are both exempt from taxation and capable of providing contributors with a tax deduction.

Section 501(c)(3) of the Code defines charities as follows:

"Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, 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, 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, and which does not participate in, or intervene (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office."

The Treasury Regulations currently list six heads of charitable purpose, of which the third -- the "advancement of education or science" -- is most relevant to the arts. Under this third head, the IRS has recognized an enormous variety of arts organizations as charitable...

With a few exceptions, charitable status under section 501(c)(3) of the Code is not accorded automatically: every new organization seeking exemption from taxation must apply to the IRS for recognition of its exempt status under Code sec. 508(a). The exceptions are churches and related organizations, and public charities with average annual gross receipts of $5,000 or less...

II. INCOME TAX TREATMENT OF CHARITABLE CONTRIBUTIONS

Under section 170(a)(1) of the Code, individual taxpayers who itemize their deductions are allowed to deduct from their adjusted gross income any charitable contribution which is made within the taxable year. For example, if an individual taxpayer with a top tax rate of 32 percent contributes $100 to a charity, his or her taxable income is reduced by $100 and he or she saves $32 in tax. As far as the charity is concerned, it receives a tax free give of $100.

Because of the progressive system of tax rates, taxpayers in higher tax brackets gain even greater tax benefits from their charitable contributions. For example, a taxpayer with a top tax rate of 70 percent, who gives $100,000 to a charity, saves $70,000 in tax on the gift.

The charitable deduction is not available to those who do not itemize their deductions. Instead, nonitemizers are limited to a standard deduction, the so-called "zero bracket amount" ($3,400 for a married couple filing jointly and $2,300 for an unmarried individual in 1979), which is built into the tax tables. Thus, nonitemizers have no incentive to make charitable contributions because they are allowed to take the standard deduction whether they make any charitable contributions or not. Only those whose contributions exceed the zero bracket amount are allowed to itemize.

The Filer Commission found that in 1972 only 35 percent of the taxpayers itemized their deductions: most of these itemizers are in the higher income brackets. In practice, therefore, the charitable deduction for private support of the arts is predominantly a preserve of the well-to-do. It is for this reason that the Filer Commission recommended that all taxpayers who take the standard deduction should also be permitted to deduct charitable contributions as an additional, itemized deduction. Bill 22 to this effect are currently pending in the U.S. Congress: these are S. 219, sponsored by Sen. Daniel P. Moynihan (D.-N.Y.) and H.R. 1785, sponsored by Rep. Joseph L. Fisher (D.-Va.).

A corporation is also allowed to deduct from its taxable income any charitable contribution which is made within the taxable year, under Code sec. 170(a)(1), or which is authorized by its board of directors within the taxable year and is paid no later than the 15th day of the third month following the close of that year, under Code sec. 170(a)(2).

What is a Charitable Contribution?

A charitable contribution is defined by section 170(c) of the Code...section 170(c)(2)(B) is essentially coterminus with section 501(c)(3) of the Code. Thus, a contribution to any arts organization that is recognized by the IRS as exempt under section 501(c)(3) will be deductible under section 170(a).

Three additional points are worth making here about the scope of the charitable deduction.

First, no deduction is allowed for a contribution of services (as opposed to property). But taxpayers who donate their
services to a charity may deduct any unreimbursed expenses incidental thereto, such as travel or other out-of-pocket expenses. For example, an attorney who gives an hour of free legal advice to a charity may not deduct the value of his or her time; but he or she may deduct the cost of mailing a letter to making a telephone call for the charity.

Second, taxpayers who receive a benefit from their charitable contribution may deduct the contribution only to the extent that it exceeds the value of the benefit received. For example, if a taxpayer pays $25 to attend a charity dinner and the value of the dinner is in fact $10, he or she may deduct only $15 as a charitable contribution.

Third, the value of donated property other than cash is its fair market value at the time of the gift. The Treasury Regulations define fair market value as:

"(T)he price at which the property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of relevant facts."


Statutory Limitations

The charitable deduction is subject to two important statutory limitations which reflect a public policy to discourage its use for purposes of tax avoidance. First, the total amount of charitable deductions allowed in any given year is limited to a certain percentage of the taxpayer's income. Second, if the donated property has appreciated in value in the hands of the donor, the amount of the deduction may be reduced by some or all of the appreciation...

Note: the article continues here with a discussion of these two statutory limitations. Members and subscribers may write for a copy of the full paper to NAPNOC, P.O. Box 3036, Washington, DC 20010.

Further Reading

A Tax Guide for Artists and Arts Organizations (H.K.Lidstone ed. 1979)
I.R.S. Publication 526, Charitable Contributions (1979)
Commission on Private Philanthropy and Public Needs (the "Filer" Commission), Giving in America (1975)
I. Bouaert, Taxation of Cultural Foundations and of Patronage of the Arts in the Member States of the European Economic Community (1975)

SAN FRANCISCO: Community Control... But is there a catch?

San Francisco's Neighborhood Arts Program (SFNAP) has been of interest to neighborhood arts people since its beginnings in the late '60s. At first it stood as a mod-

el during much of the neighborhood arts movement's greatest period of expansion. Later it became the target of criticism from neighborhood arts people in the San Francisco Bay Area who felt SFNAP had abandoned its commitment to community cultural development, becoming over-centralized, incompetent and unresponsive. Longtime NAPNOC members will recall Philip Arnout's report in the Communiqué of March 1978, pointing out the failure of planning that resulted in problems with SFNAP's CETA program and community cultural facilities.

Members have been keeping NAPNOC posted on developments in San Francisco, which have been coming fast and furious. Some weeks ago we received a copy of a letter sent by Mayor Dianne Feinstein to members of the San Francisco Art Commission (SFNAP is a project of the Commission). Here are some excerpts:

"The purpose of the tax-funded arts program in San Francisco is to promote and encourage artistic and creative expression for the enjoyment and enlightenment of all San Franciscans. It is not, nor should it ever be allowed to become the conduit of special interests for political agitation and propaganda. I reaffirm this obvious principle because I expect it to be enforced by your Honorable Commission."

"In particular, the Neighborhood Arts Program...should welcome broad community participation and should not be permitted to narrow (its) activities to service political undertakings intended simply to promote political support and action."

Mayor Feinstein's letter was apparently prompted by activities in the four community cultural centers which are the mainstay of SFNAP's program now. These four centers were purchased during the mid and late '70's by the Art Commission using federal revenue sharing funds. The three of them are large, unfinished spaces -- a former brewery, a furniture store, a warehouse -- and the other is an old opera house. They are located in the Mission District, a predominately Latino area; in the South-of-Market District, an industrial area with a mixed residential population of Latinos, Filipinos and mostly-young avant-garde artists; the Western Addition, a predominately Black area decimated by the City's "redemption" program in the '60s; and the Bayview-Hunters Point District, a predominately Black area and the City's poorest neighborhood.

Art + Politics = Fire Violations

The centers are often the sites of cultural activities with a political thrust. People at the Mission Cultural Center (MCC) tell us that Feinstein's letter came in response to activities held at the MCC in support of the new government in Nicaragua & the revolutionary movement in El Salvador; elsewhere we heard that a billboard at the South-of-Market Center advertising an exhibit of radical posters held across town spurred complaints to City Hall.
Ironically, when the Art Commission first purchased the cultural center buildings, the main controversy was a dispute between neighborhood arts people who wanted to control programming of the facilities and the Commission, which wanted control to remain downtown. There were community meetings, petitions and demonstrations, but in the end the Commission held the purse strings and so prevailed. Maciel seemed to be saying that things had changed: "The Commission has realized that NAP was on the wrong track, and that it was increasingly difficult for NAP to obtain private funds -- that foundations don't want to support municipal programs that have been cut, they want to support the communities directly."

"So in the last few weeks we've been trying to organizing a Coordinating Council of the four cultural centers' 'Friends of...' organizations. Then these nonprofit organizations could band together and avoid a lot of duplication. For instance, they could hire a fulltime fundraiser, or centralize fiscal management by hiring one accountant for the centers instead of four...By having such wide representation it could be a very effective lobbying body."

"So although the community arts pie is not getting any bigger, it's just a matter of re-slicing it. Having NAP take the role of housekeeper will require a much smaller slice of the pie. Then by transferring the programming and the relation to the administration to the Coordinating Council, the centers will have a bigger slice."

And what about the controversy over what's politics and what's art? Can't the City as landlord still close down the cultural centers for fire violations and the like, and then refuse to make repairs? Maciel felt the only solution to this problem was making sure that the centers were free of violations: "An architectural firm has been retained to draw up a master plan for the four buildings, including all the work that needs done in relation to handicapped access, fire, earthquake safety, all those things. Of course we don't have the money now. There's half-a-million dollars available, and the whole project would cost 4 or 5 million. But with that money we can immediately reopen the centers."

Maciel is hopeful that "re-slicing the pie" will mean new private funds available for the cultural centers. He explained that there is a new private fundraising group called "Friends of the Arts" which has pledged to raise a substantial amount of money from individuals and corporations for SFNAP, on the condition that SFNAP gets out of the private fundraising game itself, leaving the foundation field clear for the Coordinating Council to raise funds for the centers. He sees this new fundraising plan as key to his new role as Coordinator of SFNAP and to the City's decision to accept his offer. "The city has said it will support these centers. In short, he believes the City will grant community control of the centers if the communities will come up with outside money to pay for their programs themselves."

Complicated Questions

It's too soon to know how this new plan for SFNAP will work out: at the moment
it raises as many questions as it answers. When SFMAP began, it was conceived as a citywide program, and it provided support for community cultural activities in all parts of San Francisco. The new program will serve only the four centers and related activities. Will people in San Francisco's other neighborhoods pressure the City to respond to their cultural needs? Will the new Coordinating Council succeed in overcoming the in-fighting and tendencies which have historically defeated citywide neighborhood arts organizing in San Francisco? Will the Council be able to raise funds to replace the post-Proposition 13 cuts in City support (it's only now that we are beginning to see the full impact of these cuts)? And finally, will San Francisco's government maintain a commitment to decentralization of community cultural programs if it is based only on finances?

Maciel closed our conversation by saying, "The future looks very promising. In fact, it looks so promising that I keep telling the people I'm working with that it shouldn't blind us into lowering our guard. In some ways it's too rosy a picture; let's keep our guard up."

From NCTA: A Touring Perspective on Cultural Pluralism

The "touring boom" of performing arts groups in the past decade or so has done a lot to increase the visibility (and in some cases the incomes) of professional performing arts organizations. But for people who fall outside the definition of professionalism set by most public arts agencies, this "boom" hasn't had much impact. Developing new touring activity demands major commitments and the willingness to take a financial risk.

Dick Shea has worked with the National Council for the Traditional Arts (NCTA) for some time developing touring programs for traditional ethnic music groups. NCTA's "Mountain Music Homecoming" program last April inspired She to write a thoughtful letter to Larry Kuboda of the National Endowment for the Arts' Planning Division about the need for alternative approaches to public support of touring groups. Much of Shea's letter is excerpted in this article.

"The object of the (Homecoming) tour was not to bring culture to the 'hinterlands,'" according to Shea. "In fact, all of its performers were drawn from...places like Sodom Laurel, North Carolina, Mountain City, Tennessee and Clospint, Kentucky. I did not expect those groups to make a living in the communities it visited; in fact, it encouraged those communities to look around and discover within themselves the wealth of local tradition and artistry they already possessed. On several occasions, the tour shared the stage with respected local performers."

"One cannot help but ask some questions about the conceptual underpinnings of most of the other touring activities going on at taxpayer expense in our country today," Shea continues. "Who are those tours really reaching? Are local tour sponsors really in touch with broad segments of their communi-

ties? Or perhaps with just a very limited, educated and privileged sector? Despite all the talk about developing new audiences, isn't it the same select ten percent who almost always end up being served? If this is the case, is there any point in continuing to stimulate the over-stimulated? Isn't the real problem that most Americans, the other ninety percent, have no contact with any live performance at all? And what does the notion that culture must be imported from the outside do to a community's perception of itself and, more importantly, to its own sources of local culture and tradition?"

Here is Shea's prescription for the NEA, excerpted from his letter to Kuboda:

"As I am sure you are aware, there were serious unconscious class and ethnic biases in the original conceptualization of the Endowment, that being some form of public support for major national high and avant garde arts institutions. These biases were not introduced by design, but rather grew naturally out of the process which initially gave birth to public support for the arts in our country. As the Endowment and other public arts agencies have grown,... they have in most cases tried to deal with this limitation which, by the way, turned out to be a political as well as a conceptual one. In general, they have done so by extending their definition of responsibility to include other smaller institutions of local and regional import, and through initiatives to expand the audiences and geographic reach of all of these institutions. 'Outreach,' 'audience development,' have become the key phrases in a campaign of sorts to deal with this initial problem, while at the same time defining future directions for growth in the public sector arts support network.

"The upshot of this process over the past several years has been the establishment of a nationwide infrastructure of public and private support for the arts in our country. That structure now includes a network of local, state and regional arts agencies working in cooperation with the Endowment, a proliferating field of private arts producing and arts service organizations, as well as a growing involvement on the part of corporate and philanthropic sources in private giving to the arts.

"While this process has succeeded in spreading funding and institutional support somewhat more evenly across the national landscape, the infrastructure and animus underlying this growth have, for the most part, remained geared toward serving the needs of those types of art forms which the (NEA) originally set out to support. Yet, there is clearly only a limited audience within the national population for these types of arts, no matter how available they become. That audience...is, in addition, readily definable in rather restrictive socio-economic and ethno-cultural terms. This situation inevitably poses a major dilemma for, while public arts agencies face an obvious responsibility to serve all of the citizens within their respective jurisdiction, most of them have become inextricably bound up in funding commitments and in-
Audiences in folk, ethnic and tribal communities are mobilized in a very different way. Sponsoring organizations for cultural activities in these communities are of a radically different nature. Perhaps most importantly of all, the folk and ethnic artist...cannot be dealt with in the standard ways in which symphony orchestras, opera companies, fine art galleries and theater troupes are....The expansion of present public arts policy to include multicultural programming as one of its core concerns would thus imply a major commitment to re-structuring much of the existing public arts support network.

"The experience of the ethnic performing arts touring program and of other similar projects points up what some of the implications of...such a policy might be. For the record, it should be noted first of all that the raw materials for producing quality public arts programs of only the highest calibre are indeed there. Extensive field research carried out over the past twenty years...has uncovered literally thousands of previously unrecognized artists and performers of virtuoso calibre. The general consensus of professionals in the field is that the process of locating such talented artists has nevertheless still only just begun for many of the ethnic groups in the country. So, a reservoir of qualified artistic personnel does indeed exist within the country to mount a successful national program of multicultural arts programming.

"Secondly, present programs of public support in this area are clearly inadequate to meet the funding needs implicit in the implementation of a policy on this scale. The experience of the (NEA Folk Arts-funded) ethnic performing arts touring program is instructive in this regard. With only the beginnings of four ethnic tours on the road, the program has already bumped up against the limits of...the present Folk Arts budget. Yet, there are well over one hundred ethnic, regional, and tribal groups that make up our national population! It is clear that major funding commitments will be required from the Endowment and other public arts agencies in order to get programs of this nature off the ground. In the case of ethnic tours, such funding would certainly have to be on the scale of the Dance Touring Program at the very least, in order to effectively serve the universe of artists, art forms and population segments being discussed here.

"Thirdly, many of the support mechanisms designed to accommodate the high and avant garde arts have proven entirely inappropriate for folk and ethnic art forms. Audiences in folk, ethnic and tribal communities are mobilized in a very different way. Sponsoring organizations for cultural activities in these communities are of a radically different nature. Perhaps most importantly of all, the folk and ethnic artist...cannot be dealt with in the standard ways in which symphony orchestras, opera companies, fine art galleries and theater troupes are....The expansion of present public arts policy to include multicultural programming as one of its core concerns would thus imply a major commitment to re-structuring much of the existing public arts support network.

"The prospect of every ethnic group...coming in for public arts monies tends to instill apprehension in even the most sympathetic of public arts administrators. ...this fear is misplaced, for while folk, ethnic, and tribal groups do have their problems, institutional greed is not among them. Their needs, too, tend to be quite modest. The experience of the ethnic arts touring program and of other similar projects has shown that such endeavors cost considerably less and have appreciably greater impact than many of the high budget items presently supported by the Endowment and other public arts agencies. In fact, of all the types of arts activities funded from public sources, those from the folk and ethnic fields show the greatest prospects for ultimately becoming self-supporting. Indeed, not a few of the various high and avant garde arts festivals held in this country each year bankroll practically their entire operations from sales of ethnic foods, a culinary folk art form in and of (itself).

"Beyond these practical considerations, of course, there are compelling moral reasons for contemplating the implementation of such an alternative approach to public arts support which might parallel that already in place."

Note: If you are involved with a group which like NCTA is thinking about the same cultural questions as neighborhood arts people, perhaps you would like to share its thinking with NAPNOC notes readers? If you are, or perhaps if you are not...but eager to contribute. You can mail your comments across thought-provoking material, send it along.

National Council for the Traditional Arts 1346 Connecticut Avenue NW, #1118 Washington, DC 20036
(202) 296-5322

NEIGHBORHOOD ARTS AGAINST THE KLAN

NAPNOC member Lincoln Cushing of the Progressive Cultural Workers Network in San Diego (CA) has called our attention to Grass Roots Events, a nonprofit group that organizes and produces community cultural events.

Grass Roots Events is sponsoring a 2 month-long series of events called "Celebrations of Human Dignity," a series of concerts, educational forums and cultural gatherings aimed at "urging the many communities in San Diego with their diverse cultural strengths to come together in song, verse and image proclaiming: 1. Dignity is a human right! 2. Racism hurts everyone! 3. The Ku Klux Klan offers no solutions!"
"Celebrations of Human Dignity" has been organized to counter an upsurge in Ku Klux Klan activity around San Diego. From a letter from Grass Roots Events: "I want to request your endorsement and support for a positive cultural program designed to help counter a dangerous threat growing in southern California.

"On June 2 Tom Metzger, grand dragon of the Ku Klux Klan, received 33,152 popular votes to capture the Democratic Party nomination for congress. This event culminates several years of right wing growth during which bigotry, racism and hatred have become standard fare in the public arena. From crudely stenciled slogans to slick media ads to rape and murder at the Mexican border, San Diego is on the firing line of a serious right wing offensive."

The Klan has been a theme in the work of neighborhood arts people in other parts of the country, too. The Play Group in Knoxville (TN) was concerned in its most recent production -- "If I Live to See Next Fall" -- with Klan organizing in the South earlier in this century, and how the Klan sought to defeat the organizing efforts of tenant farmers.

Grass Roots Events wants the endorsements of other organizations, and also wants to link its efforts with similar work by other cultural groups. Contact Lynn Eldred at (714)295-2134 or write Grass Roots Events at P.O. Box 8134, San Diego, CA 92102.

NATIONAL RURAL CENTER GUIDE

The National Rural Center (NRC) is currently developing a "handbook/resource guide" intended to aid rural and small communities in planning and implementing arts programs. This is the final phase of a joint project of NRC and the American Councils for the Arts which centered on a 2½ day conference in New Harmony, Indiana, last spring.

The NRC plans to illustrate each section of its guide with examples of cultural activities in rural communities all over the country. (The project so far has focussed mainly on the Midwest.) Major sections will cover: Why the arts are important in rural areas, with articles on such topics as cultural heritage, education, community and economic development, and recreation; financial resources and strategies; and technical assistance sources and information.

The NRC is operating with a very tight time schedule; they want to have information in hand on September 15, but they will settle for simple contact information (they'll send you a one-page form) along with printed program descriptions or reports, news clippings, short narratives or even cassettes. Interested rural groups (or urban groups with rural connections) should call the NRC's toll-free line for more information: (800)424-9679. Leave a message for Betty Vinson or Susan Barron and they will call you back.

Not all the information the NRC collects will be used in the guide, but they tell us that it will be kept on file for public use. There will be a listing in the guide for each group that sends in information, and each respondent will receive a free copy of the guide when it is produced.

Materials should be sent to: Betty Vinson, Arts Project Director, National Rural Center, 1828 L St. NW #1000, Washington, DC 20036.