

M E M O R A N D U M

TO: Michael W. Grebe
Mandy L. Hess

FROM: Cynthia K. Friauf

DATE: June 20, 2006

RE: Foreign recipients of Bradley Prizes

I called on two foundations that award prizes to foreign recipients for past achievements. I spoke to Pat Gory from the John D. and Catherine T. MacArthur Foundation and Valerie Martin from the Templeton Foundation. Both foundations solicit withholding information from foreign prizewinners. They inquire as to whether the prize will be spent within the U.S. If the recipient indicates that the prize will be spent within the U.S., they obtain a Form W-8BEN and invoke a treaty exemption where one is in place. If there isn't a treaty exemption, they withhold 30% of the amount of the prize that will be spent in the U.S.

Foreign prizewinners are not subject to withholding if the prize is spent outside the U.S. because, both Pat and Valerie agreed, the past achievements were for achievements in foreign countries.

The procedures used by these two foundations do not differ much from those used for grants to foreign organizations. The difference is that there is no grant agreement on how the money will be spent. The prize is awarded to the individuals for their past achievements therefore there is no follow up expenditures.

We are consistent with both foundations with the request for withholding information from foreign individual and organization grantees.

Gallagher, Richard S.

From: Alicia Witten [awitten@execpc.com]
Sent: Tuesday, December 19, 2000 10:04 AM
To: dfwmembers@topica.com
Subject: Fw: DFW Update: New Withholding Requirements for Foreign Grants

Regulation Memo New Tax Withholding Requirements for Foreign Grants

DATE: December 15, 2000

TO: Foundations Involved in International Grantmaking

FROM: John A. Edie, General Counsel and Jane C. Nober, Special Counsel

RE: New Tax Withholding Requirements for Foreign Grants That May Pay for Some Activity Conducted in the United States

Where did these new regulations come from?

Tax Code Section 1441 sets forth the requirements for tax withholding that applies when a U.S. entity makes payments to a "nonresident alien" (individual). Section 1442 does the same for payments to foreign corporations and Section 1443 does the same for payments to foreign tax-exempt organizations. The new regulations were issued under Section 1441 but are applicable to all three of these sections. For reasons having nothing to do with foundations, Treasury badly needed to modernize these rules as they affected foreign investors and other entities. The resulting regulations of necessity include foundation payments to foreign individuals and foreign organizations in circumstances where the payment will result in some kind of activity performed **in the United States**.

The recently released final Section 1441 regulations generally require foundations that make grants or award prizes to foreign individuals or foreign organizations **who perform all or part of their grant-funded activities in the United States** to withhold U.S. taxes from these payments. Exemptions from this withholding requirement will be available if the recipient qualifies for an exemption under a U.S. tax treaty or the recipient organization can establish that it could qualify as a U.S. tax-exempt organization; the regulations provide details on the documentation required to take advantage of these exemptions. **The withholding requirement will not apply to any portion of a grant that will be used exclusively for activities to be performed outside the United States.**

Background: Sourcing Rules for Grants

In general, U.S. entities that pay scholarships, fellowships, grants, prizes or awards to foreign recipients in connection with activities the recipients have performed or will perform must withhold U.S. tax from such payments if the payment is considered to have a U.S. source. (Grants that are to be used by the foreign recipient to purchase property are **not** subject to withholding, irrespective of their source.)

A few years ago, as the result of the persistent efforts of a number of private foundations and the Council on Foundations working with the Treasury and IRS, the Treasury made it clear that scholarships, fellowships, grants, prizes and awards have a foreign source - and therefore are not subject to withholding - if they are made by a U.S. foundation to a non-U.S. individual or entity with respect to activities conducted outside the United States. This grant sourcing rule relieves foundations from the burden of withholding on most grants they make to foreign parties who do their work abroad.

However, U.S. foundations still need to be familiar with the withholding rules for grants or prizes they give to foreign recipients - whether to individuals or to organizations - that do some or all of their grant-sponsored work in the United States. These grants and prizes - or portions thereof - will require withholding unless: 1) the recipient qualifies for an exemption under a U.S. tax treaty or 2) the recipient can establish that it could qualify as a U.S. tax-exempt organization. The foundation must follow new procedures (outlined below) to establish that a treaty exemption or an exemption based on the recipient's ability to qualify for tax-exemption applies for payments made on or after January 1, 2001.

When are foundation grants to foreign recipients potentially subject to withholding?

A grant or award from a U.S. foundation is generally subject to 30% withholding if it is paid in connection with the conduct