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### **Fiscally Sponsoring an Artist's Project**

You are an arts group that has your tax exempt status and you want to help out an artist who has an interesting project that is starting to attract philanthropic support.

*Can your organization be a fiscal sponsor for an individual artist's project?*

Yes. A 501(c)(3) organization can fiscally sponsor an individual's project (a "sponsored project") and collect tax-deductible donations and grants on behalf of that sponsored project, as long as the project is within the fiscal sponsor's mission.

*What type of projects can be sponsored projects?*

The phrase sponsored project is used very broadly; it may refer to a one-time project or the entire artistic practice of an individual. We recommend that a fiscal sponsor require some specificity from an artist on what particular project is being sponsored in order to ensure that:

- the project is charitable and not benefiting the artist's public gain and
- the project's mission is aligned with the fiscal sponsor's mission.

*How closely do the missions of the fiscal sponsor and the sponsored project need to align?*

The IRS requires that the fiscal sponsor only distribute funds to a sponsored organization that engages in projects "that are in furtherance of [the fiscal sponsor's] own exempt purposes."<sup>1</sup> Unfortunately, there is no exact formula to assist the parties with this determination, however, it is essential that the fiscal sponsor's board of directors review and approve the sponsored project's mission as furthering the fiscal sponsor's exempt purposes. In addition, the fiscal sponsor's board should adopt a resolution documenting its conclusions and approving a grant to the sponsored project, to be funded to a certain amount, or to the extent that the fiscal sponsor receives outside funds for the sponsored project.

*What's involved in being a fiscal sponsor?*

Fiscal sponsors are required to retain a certain amount of control of the donated funds and not act as a mere conduit funneling money to the artist. The exact level of control will depend on the type of fiscal sponsorship arrangement the fiscal sponsor and artist enter into.

Fiscal sponsors should be aware of all applicable laws relevant to the sponsored project and educate the artist, particularly when it comes to compliance and reporting requirements

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<sup>1</sup> See Rev. Rul. 68-489, 1968-2 C.B. 210 (1968).

associated with tax obligations, fundraising, and other federal, state, and local regulations because these activities are attributable to the fiscal sponsor. For instance, a public art installation may need a city permit and an agreement with the owner if on private property. To this end, it is essential that the agreement between the fiscal sponsor and the artist clearly set out the oversight parameters so that the fiscal sponsor can ensure that the artist is only using the funds to further the fiscal sponsor's mission.

Additionally, fiscal sponsors must have a system for handling and accounting for project funds separately from the fiscal sponsor's general budget and should never use project funds for any other project. Fiscal sponsors should also maintain some basic correspondence with project funders, including at the very least a letter acknowledging receipt of tax-deductible gifts. Lastly, the fiscal sponsor is required to include in its annual IRS 990 filing the revenues that are accepted by the fiscal sponsor on behalf of the sponsored project.

*What would the artist get out this type of arrangement?*

The biggest advantage of fiscal sponsorship from the artist's point of view is that the artist can more easily receive funding for his or her project from private foundations, government agencies, individuals, or corporate donors. This is because governmental agencies and institutional funders are either required by law, or simply prefer, to make contributions to organizations with tax exempt status. Individual donors, on the other hand, are more likely to give when their donation is tax-deductible.

In addition, depending on the fiscal sponsorship agreement, the fiscal sponsor can assist the artist with project management, fundraising, assisting with preparing all required state and federal government reports and informational returns, insurance, and other back office support. Lastly, the support of a well-known and respected fiscal sponsor may also bring a level of credibility to the artist's project that may lead to new opportunities for fundraising, facilitate relationship-building with other organizations, and increase the sponsored organization's ability to obtain volunteers and other supporters.

*Can my organization sponsor a project by a group of artists?*

Yes, the art project may be carried on by a group. In that case, however, consider requiring that the group form some kind of entity, such as an unincorporated association. Such an association will have articles of association which will address the group's operational issues, such as which artist is responsible for which aspect of the project, which artist is the spokesperson for dealing with your organization, and who will own the intellectual property rights in the sponsored project? Note, however, that the fiscal sponsor will need to report the social security number of only one of the artists.

*Will my organization, as fiscal sponsor, be paid anything for assisting a sponsored project?*

Yes, a fiscal sponsor will generally charge the sponsored project a fee for its services, generally 1-15% of the sponsored project's revenue. The range usually depends on what

services the fiscal sponsor is providing and the reputation of the fiscal sponsor in the non-profit industry. The amount charged for a fiscal sponsorship should be included in the fiscal sponsorship agreement.

*Is there any downside of being a fiscal sponsor?*

Yes, if the IRS determines that a fiscal sponsor is not exercising appropriate oversight to ensure that the revenue of the sponsored project is being used by the artist to further your organization's charitable purposes; it may treat the donations as if they were given directly to the artist. This would mean that the contributions would not be tax-deductible, the artist would owe tax on these contributions, and your organization could be at risk of losing its 501(c)(3) status.

In addition, since a sponsored project essentially operates as a program under the umbrella of the fiscal sponsor, the fiscal sponsor needs to make sure that all parties involved with the sponsored project abide by the fiscal sponsor's policies, including ethics guidelines, conflict of interest policies, and other internal operating guidelines.

*No matter how small the sponsored project is, the fiscal sponsor needs to enter into a fiscal sponsorship agreement with the artist.*

As with other contractual relationships, the parties to a fiscal sponsorship agreement should have a clear understanding of the arrangement and memorialize that understanding in writing. Having a written agreement can help the parties avoid surprises and lay out a clear process for approval of expenditures, reporting, and other essential provisions of the arrangement. A written agreement can also evidence to funders, state regulators, and the IRS the commitment of both parties and a good faith effort to comply with the relevant law.

At the minimum, a fiscal sponsorship agreement should include the following:

- a description of benefits and services to be provided by the fiscal sponsor,
- a statement that the funds received on behalf of the sponsored project only be used in furtherance of the fiscal sponsor's mission,
- a fund request and distribution process,
- recordkeeping and reporting obligations,
- liability and indemnification provisions,
- insurance requirements,
- ownership of intellectual property that is created during the term of the fiscal sponsorship,
- term of the agreement, and
- a termination process.

It is advisable for both parties to have the fiscal sponsorship agreement reviewed by legal counsel knowledgeable in this field.

General information about fiscal sponsorship can be found on Lawyers Alliances' website at [www.lawyersalliance.org/pdfs/news\\_legal/Fiscal\\_Sponsorship\\_FAQs\\_April\\_2015\\_FINAL.pdf](http://www.lawyersalliance.org/pdfs/news_legal/Fiscal_Sponsorship_FAQs_April_2015_FINAL.pdf).

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