

THE NETHERLAND-AMERICA FOUNDATION, INC.
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MEMORANDUM

To: Dutch Cultural, Educational and Charitable Institutions Date: October 31, 2019
Institutions

From: The Netherland-America Foundation, Inc.

Re: Cooperation in U.S. Fundraising

A. Introduction

Many Netherlands-based cultural, educational and charitable institutions (“Dutch Institutions”) seek to raise funds in the United States to support their mission. A major obstacle to such fundraising is that any gifts made by U.S. taxpayers directly to Dutch Institutions are not deductible for U.S. tax purposes.

This memorandum sets forth a legal structure that facilitates cost-effective and tax-efficient cooperation in fundraising between the Netherland-America Foundation, Inc. (the “NAF”) and Dutch Institutions. This structure gives U.S. donors the advantage of a U.S. income and gift tax deduction for their gifts.

B. The Netherland-American Foundation

Founded in 1921, the purpose of the NAF is to facilitate and improve the bonds between the Netherlands and the United States through exchange in education, the arts, sciences, public affairs and business. For example, the NAF funds more than half of all Fulbright Fellowships for graduate study in the U.S. by Dutch students and vice versa. In addition, the NAF supports various other programs, such as the interest-free study loan program, the cultural exchange program and various business networking programs. The NAF operates under the patronage of Her Royal Highness Princess Margriet and professor Pieter van Vollenhoven. The NAF is a New York nonprofit corporation recognized under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the “Code”), and classified as a public charity under Sections 509(a)(1) and 170(b)(1)(A)(vi) of the Code. Additional information on the NAF is available on its website at www.thenaf.org.

The support of most Dutch Institutions falls within the scope of the NAF’s mission. Thus, by assisting these Dutch Institutions, the NAF will further its charitable goals. With its numerous other programs, the NAF has the administrative structure in place to process donations from U.S. donors. The NAF and the Dutch Institutions mutually benefit from the cooperative structure as set forth below.

C. Legal Background

American taxpayers who are interested in giving money to a particular cause abroad encounter the problem that their donation is not deductible under U.S. tax laws. American donors therefore generally prefer to work with a U.S.-based intermediary charity. Contributing to a U.S. charity in order to provide support to a non-U.S. charity is a tax-efficient way to satisfy the international donative goals of a U.S. taxpayer. If the U.S. charity meets certain requirements, individuals who contribute to it can deduct the contributions for U.S. income and gift tax purposes regardless of whether the non-U.S. charity may ultimately receive the funds by way of grant from the U.S. charity. This result follows as long as the U.S. charity retains control over its operations and over any funds it receives. For example, the U.S. charity can publicize that it regularly provides support to a non-U.S. charity and solicit funds on this basis. Specific rules, however, require that the U.S. charity retain its independence from the non-U.S. charity. For example, the U.S. charity must not be “required” to contribute funds to a non-U.S. charity, nor may donors earmark funds specifically for certain non-U.S. organizations. Otherwise, contributions to the U.S. charity will be considered de-facto contributions to the non-U.S. charity and thus will not be deductible for U.S. income tax purposes. As conditions to the deductibility of donations made to a U.S. charity, the U.S. charity must review and approve any grants that it makes out of donated funds as being in furtherance of its own purposes; must maintain full control of the donated funds; and must retain discretion over their use.¹

D. Overview of the Friend Fund Structure

The NAF is permitted to make grants to other charitable entities, wherever they are located. The NAF will not jeopardize its tax exemption as long as it retains control as to use of the funds and maintains adequate records. As long as the NAF is not a mere conduit through which the funds flow, then contributions to the NAF will remain deductible for U.S. federal income and gift tax purposes. A common approach would be for the NAF to set up a special fund dedicated to receiving donations for the Dutch Institution (a “Friend Fund”). The Dutch Institution will be able to inform its donors and potential donors based in the U.S. that they can support the Dutch Institution through a contribution to the Friend Fund at the NAF. The NAF will collect the funds on behalf of the Dutch Institution, in exchange for a percentage of the donations that will cover its administrative costs. From time to time, the Dutch Institution will make a non-binding recommendation for a grant distribution from the Friend Fund at the NAF. The NAF will then review the recommendation to assure that the recommended use of the funds is consistent with the NAF’s guidelines and charitable purpose. In order to maintain the required “control” over the donated funds, the NAF will need to implement certain safeguards, such as the following:

1. The Board of Directors of the NAF (the “Board”) (or in its stead the NAF's Executive Committee (the “Executive Committee”) or the Friends Fund Committee, a special committee of the NAF (the “Friends Fund Committee”))

1. The non-U.S. charity should not be able to influence the decision-making processes of the U.S. charity. For example, if the two charities were to have common board members, it would be best if such members did not participate in voting on whether to make grants to the non-U.S. charity.

will review, approve and authorize each grant recommendation to ensure compliance with the charter and policies of the NAF.

2. The NAF will require the Dutch Institution to provide periodic reports to demonstrate satisfaction of agreed standards of performance and accountability.
3. The Board (or the Executive Committee) will retain full control and absolute discretion over use of all donated funds, including the right to discontinue further funding of foreign projects that fail to satisfy standards of performance or accountability.
4. The NAF will disclose to contributors that the NAF, and not the Dutch Institution, has complete discretion over the use of funds contributed.
5. The Friends Fund Committee may monitor and oversee projects of the Dutch Institution.
6. The NAF will maintain separate financial records of contributions to the Dutch Institution.

E. Required Documentation

A carefully drafted set of documents is needed to ensure that donations to the Friend Fund remain tax deductible by U.S. donors, including the following:

1. A Collaboration Agreement between the NAF and the Dutch Institution. This agreement will cause the formation of the Friend Fund and generally governs the relationship between the two charities, including any fees to be charged by the NAF for its services.
2. A Donation Letter from the U.S. donor. The U.S. donor will be required to sign a gift form whereby the donor acknowledges that the NAF will retain control over the donated amount, regardless of the donor's designation of the Friend Fund as recipient.
3. An Acknowledgement from the NAF. The NAF will send an acknowledgement of the gift to the U.S. donor.
4. A Grant Agreement between the NAF and the Dutch Institution. Upon recommendation by the Dutch Institution for a grant distribution from the Friend Fund, the NAF and the Dutch Institution will enter into a separate grant agreement. This agreement will specify the purpose for which the distributed funds may be used. It may also contain certain reporting requirements that the Dutch Institution will need to comply with.

As part of proper diligence review into the activities of the Dutch Institution, the NAF would acquire certain information from it, regarding, e.g., the Dutch Institution's budget and sources of funding, perhaps by means of a questionnaire. In addition, the Dutch Institution

would be required to sign an affidavit in which it represents that it is the equivalent of a charity as described in Section 501(c)(3) of the Code.

Additionally, Friends Fund Committee will oversee the Friend Fund. The Friends Fund Committee devises and applies certain policies with respect to the granting of funds to foreign charities. Such policies could include (i) that the Board, the Executive Committee or the Friends Fund Committee must review all requests for funds from a foreign organization and require that such requests specify the use to which such requested funds would be put, (ii) that the Board, the Executive Committee or the Friends Fund Committee is required to approve all grants, (iii) periodic accountings to show that the funds were expended for the purposes approved by the Board, the Executive Committee or the Friends Fund Committee, (iv) that the Board, the Executive Committee or the Friends Fund Committee retains the power to refuse to make any grants for any or all purposes for which funds were requested and (v) that the Board, the Executive Committee or the Friends Fund Committee retains the right to withdraw approval of any grant and use such funds for any other purpose.

F. List of NAF Friends Funds (as of October 2019)

The NAF's Friend Fund structure was established in April 2013. Since its inception, Dutch Institutions that have joined the program include:

American Friends of the Royal Concertgebouw Orchestra in Amsterdam

Beautiful Distress Foundation in Amsterdam

Bontius Foundation (Leiden University Medical Center

Craft in Focus Festival in New York

Frans Hals Museum in Haarlem

Fulbright Center in Amsterdam

Health(e) Foundation in Amsterdam

Henry Hudson 500 Foundation in Amsterdam

International Documentary Filmfestival Amsterdam

International Advertising and Design Database in Laren

John Adams Institute in Amsterdam

Leo Smit Stichting in Amersfoort

Museum De Lakenhal in Leiden (through the Lucas van Leyden Mecenaat)

Naturalis Biodiversity Center in Leiden

Nederlands Dans Theater in The Hague

Netherlands Carillon in Arlington, VA (through the Embassy of the Netherlands in Washington, DC)

Ocean Cleanup in Delft

Royal Conservatoire in The Hague

San Francisco King's Day (through the Netherlands Consulate General in San Francisco)

Stichting Figura Nova Foundation in Amsterdam

Stichting Free a Girl in Amsterdam

Stichting Genetische Hartspierziekte PLN in Middenmeer

Stichting Rijksmuseum van Oudheden in Leiden

Stichting Sheltersuit in Enschede

Stichting Viola Viola in Amsterdam

Stichting Windy Miller in Zaandam

Teylers Museum in Haarlem

University of Amsterdam

University of Groningen

University of Leiden

University of Twente in Enschedé

Vereniging Rembrandt in The Hague

Donor-Advised Funds for Scholars and Artists

G. Conclusion

The NAF and the Dutch Institution each benefit from the Friend Fund structure described herein. The Dutch Institution will be more successful in soliciting donations from U.S. donors by offering potential donors tax deductibility for their gifts. By assisting the Dutch Institution, the NAF will further its charitable goals. In addition, the NAF is able to retain a portion of the donated funds to cover the costs of administering the fund and simultaneously making more efficient use of its existing administrative structure.

The U.S. federal tax regulations do not prohibit the Friend Fund structure as described herein, as long as there is sufficient evidence that the U.S. charity is not a mere conduit of funds to a foreign entity and appropriate procedures are followed. The policies and procedures described herein ensure that the NAF will not be characterized as a conduit by collecting funds on behalf of the Dutch Institution.

H. Further Information

For additional information, please contact the NAF office at:

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