



# Smithsonian Institution

Lawrence M. Small  
Secretary

May 18, 2004

The Honorable Charles E. Grassley  
United States Senate  
Committee on Finance  
Washington, DC 20510-6200  
HAND DELIVERED

Dear Chairman Grassley:

Thank you for your letter of April 28, requesting documentation and information about the Smithsonian Institution's policies and practices related to the valuation of in-kind charitable donations. We appreciate the opportunity to comment on this issue.

While we understand the Committee's concerns about the possible over-valuation of donated objects and subsequent fraudulent tax deductions, the Smithsonian does not provide donors with appraisals or fair market valuations of items donated to its collection. The collections of the Smithsonian are selected for their scientific, artistic, and historical significance, not their monetary value. Our policies in this area are viewed as the industry standard and are endorsed by the American Association of Museums. This policy also is generally accepted practice in the museum community and is in accordance with the recommendations outlined in the standard reference publication on these issues. See Attachment 1: Marie C. Malero, *A Legal Primer on Managing Museum Collections*, Chapter XIII *Appraisals and Authentication* (1998).

The Smithsonian also has no involvement in the process of valuing an item so that its donor may take a tax deduction. Internal Revenue Service (IRS) regulations clearly state that the fair market value of a donated object is a conclusion that only the donor, with the aid of a qualified appraiser, is allowed to make. See Attachment 2: Internal Revenue Service Publication 561 *Determining the Value of Donated Property* at p. 10, "Supporting the [Fair Market Value] listed on your return is your responsibility."

IRS Form 8283, which is used by individuals claiming more than \$500 in tax deductions for donated objects, also makes this distinction.

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When a donee organization signs a Form 8283, it is merely acknowledging that it is a qualified charitable organization and that it has received the property being donated.<sup>1</sup> As is stated on the Form itself, "This acknowledgment does not represent agreement with the claimed fair market value." See Attachment 3: IRS Form 8283 Noncash Charitable Contributions, Part IV. This conclusion is further supported by the IRS' own regulations in this area which state that "The signature of the donee on the appraisal summary does not represent concurrence in the appraised value of the contributed property. Rather, it represents acknowledgment of receipt of the property described in the appraisal summary on the date specified in the appraisal summary and that the donee understands [reporting requirements]." See Attachment 4: 26 C.F.R. § 1.170A-13 (c)(4)(M)(iii) (2003).

IRS regulations also prescribe that when a donor seeks a deduction for an object valued at more than \$5,000, he or she must obtain a "qualified appraisal" of the item; and if the item's value exceeds \$20,000, they must attach that appraisal to the Form 8283 when it is filed, but not necessarily when it is presented to the donee organization. The definition of "qualified appraiser" specifically excludes "the donee of the property." See Attachment 2: IRS Publication 561 at p. 9. Therefore, the Smithsonian does not provide donors with appraisals of objects donated to its collection.

Since the preparation of a Form 8283 is the responsibility of the donor, it is a process which does not involve the Smithsonian except for the signature mentioned above. Some donors may never present a Form 8283 to the Smithsonian, or they may present the form without any attached appraisal information as is permitted by law. In addition, if a prospective donor were to ask a Smithsonian official for appraisal advice, it would be inappropriate to offer it; instead, we would suggest that the donor consult with tax counsel, refer them to relevant IRS publications, and in some cases provide them with a list of reputable appraisers.

Significantly, although the Smithsonian does not offer appraisals to donors, nor is it required by law to question or evaluate these appraisals, Smithsonian policy dictates that museum officials should alert their supervisors if a donor presents a Form 8283 with an appraisal that appears to be "beyond reasonable limits." This discretion has always been exercised, but was formally implemented after the Internal Revenue Code was revised to include many of the current rules related to qualified appraisals and charitable deductions. See *generally* Tax Reform Act of 1984; P.L. 98-369.

On November 30, 1984, the Smithsonian Office of the General Counsel distributed a memo to all Smithsonian Bureau Heads and Major Offices (*i.e.*, all museums and research centers) detailing the process by which a donor's Form 8283 could be signed. See *generally* Attachment 5. This memo states that while the law clearly does not equate a donee's signature on the form with a verification of the donated item's fair market value, "Curators are still urged to discuss with their superiors any instances where such summary appraisals appear to be beyond reasonable limits and/or contain seriously

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<sup>1</sup> While donors are required to attach a Form 8283 to their tax return for all donations of \$500 or more, donee organizations are required to sign Form 8283 only when the value of the donation is more than \$5000.

inaccurate descriptions.” See Attachment 5 at p. 2. This policy remains in practice to this day, and, in rare instances has been invoked, resulting in a donor’s decision to revise the appraisal or in the donation being refused altogether.

As to the Committee’s specific inquiries about the 1998 donation of four Stradivari musical instruments from Herbert Axelrod to the Smithsonian Institution, we have determined the following. Although Smithsonian policy would require a donor appraisal that was beyond reasonable limits to be brought to the attention of museum supervisors, officials at the National Museum of American History (NMAH) were not presented with a Form 8283 or an accompanying appraisal for these donated objects and thus had no opportunity to form an opinion on Mr. Axelrod’s valuation of these items.

This conclusion was reached following a thorough search of NMAH records. As described above, it is the donor’s responsibility to present the donee organization with a Form 8283 for signature. When a donor presents a Form 8283 for signature, the NMAH Registrar’s Office initiates a carefully prescribed procedure to ensure that these forms are properly signed and logged. NMAH also regularly keeps copies of these forms on file. In this instance, we are unable to locate a Form 8283 for this donation, there is no record in the NMAH Registrar’s log of a Form 8283 being executed for these donations, and no staff member in the NMAH Registrar’s office recalls seeing or signing such a form.

What we have been able to locate, and have enclosed for your review, are the contents of the Axelrod/Stradivari Accession File (the Institution’s formal record for this donation). See Attachment 6. Also enclosed are several other documents related to this donation, which are described in more detail in the index to the attachments. It is important to note that these attachments reference several insurance valuations of these objects. These values are for insurance purposes only and are not based on the object’s “fair market value,” the amount at issue when the donation is the subject of an income tax deduction. See generally Attachment 7.

We will continue to look throughout the Institution for materials related to this donation and will be pleased to forward any additional related documents we may find.

The Committee also requested copies of all IRS Form 8283s for any non-cash donations valued at more than \$10 million that have been received by the Smithsonian since January 1, 2001. The Smithsonian has no Form 8283s on file for objects with donor appraisal values over this amount during this time period.

Lastly, the Committee asked for more information on the steps taken regarding gems donated to the Institution since 1983. As the Committee is aware, in the late 1970s and early 1980s, several individuals at the National Museum of Natural History were accused of questionable collections management practices related to gems and minerals. In response to these allegations, the Institution undertook a thorough internal audit of these practices, and in 1983 implemented a revised “Collections Management Policy” for the Department of Mineral Sciences at the National Museum of Natural History. See Attachment 8.

This 1983 policy outlined stringent procedures for the acquisition and deaccession of items in the gems and minerals collection, reflecting the inherent difficulty in evaluating the scientific and historical worth of these items. In particular, the policy specifies that "Gifts of specimens are not accepted ... when the appraisal supplied by the donor appears to exceed reasonable limits." See Attachment 8, at p. 1. (As described above, a similar policy was implemented Institution-wide following changes to the tax code in 1984.) The gems policy also requires that gifts of specimens to the collection, if valued at more than \$1,000, be accompanied by "an independent appraisal submitted by the donor" but that museum staff should not provide appraisals on prospective donations and must ask the advice of legal counsel before considering any exceptions to this rule. See Attachment 8, at p.3 - 4.

If donors are, as the Committee's letter implies, inflating the value of their donated items and subsequently receiving improper deductions on their income taxes, the Internal Revenue Service can and should investigate and prosecute these fraudulent claims. Indeed the IRS Commissioner's Art Advisory Panel already has the authority to review the valuation of artworks valued at more than \$20,000, and has expedited review power when the item is valued at more than \$50,000. See Attachment 2: IRS Publication 561 at p. 10; and Attachment 1: Malaro at p. 391-2. To deputize the non-profit community with the responsibility for these inquiries would assign the highly technical and complicated work of determining an appraisal's accuracy to individuals who are not qualified nor authorized to deal in these matters.

The Smithsonian takes very seriously the legal and ethical obligations that accompany the privilege of being the nation's premier museum and research institution. While the IRS is ultimately responsible for enforcement of the tax laws, the Smithsonian would never condone or ignore any attempt to commit fraud. I can assure you that our policy has been, and will always be, to follow all applicable laws related to the donation of objects to our collections and I believe we have done so in this case.

If you have questions, or require further information, please contact John Huerta, General Counsel of the Smithsonian Institution, at (202) 357-2583.

All the best,

A handwritten signature in black ink, appearing to read "John Huerta", written in a cursive style.

Attachments

## Smithsonian Institution Response to Senate Finance Committee

### Index of Attachments

- Attachment 1: Marie C. Malaro, *A Legal Primer on Managing Museum Collections* (1998). Malaro, Chapter XIII *Appraisals and Authentication*.
- Attachment 2: Internal Revenue Service Publication 561: *Determining the Value of Donated Property*
- Attachment 3: Internal Revenue Service Form 8283: *Noncash Charitable Contributions*
- Attachment 4: 26 C.F.R. § 1.170A-13 (c)(4)(M)(iii) (2003) (Internal Revenue Service Regulation; Recordkeeping and return requirements for deductions for charitable contributions.)
- Attachment 5: November 30, 1984, Memo from the Office of the General Counsel to All Smithsonian Bureau Heads and Major Offices
- Attachment 6: Accession File on the Axelrod/Stradivari Donation<sup>1</sup>  
National Museum of American History
- Attachment 7: Additional documents related to Axelrod/Stradivari donation
- Jan. 24, 1986, Memo from V.G. Springer to Secretary Adams
  - Feb. 25, 1986, Letter from Secretary Robert Adams to Herbert Axelrod
  - Mar. 3, 1986, Letter from Herbert Axelrod to Secretary Adams
  - Mar. 3, 1986, Letter from Herbert Axelrod to John Fesperman
  - Mar. 11, 1986, Letter from John Fesperman to Herbert Axelrod
  - Mar. 12, 1986, Letter from Gary Sturm to Herbert Axelrod
  - Mar. 21, 1986, Letter from Herbert Axelrod to Gary Sturm
  - Oct. 7, 1986, Letter from Martha Morris to Dr. and Mrs. Herbert Axelrod
  - June 10, 1988, Memo from Cheryl Washer to Gary Sturm
  - Oct. 25, 1990, Memo from Cheryl Washer to Katherine Sprague

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<sup>1</sup> Although Herbert Axelrod did not donate the four Stradivarius stringed instruments to the Smithsonian Institution until Dec. 30, 1997, the instruments were loaned to the National Museum of American History beginning in 1986. (The 1997 donation was of an undivided 35 percent fractional interest in the quartet; the remainder was donated in 2000.) Attached documents reflect both the time period when the instruments were loans to the Smithsonian, the period during which the gift was negotiated, and the period after the gift was made.

- Oct. 29, 1990, Letter from Herbert Axelrod to Gary Sturm
- Oct. 13, 1994, Letter from Melanie Wolfe to Dr. and Mrs. Herbert Axelrod
- Oct. 28, 1994, Letter from Tom Freudenheim to Dr. and Mrs. Herbert Axelrod
- Nov. 4, 1994, Letter from Melanie Wolfe to Dr. and Mrs. Herbert Axelrod
- Dec. 19, 1994, Notes to file from Melanie Wolfe
- Sept. 11, 1997, Memo from Jennifer to Donna with attached charts and giving history
- Oct. 8, 1997, Outgoing Receipt for artifact loan
- Dec. 1, 1997, acquisition request form
- Dec. 30, 1997, Pledge Agreement of Remaining Fractional Interest from Herbert and Evelyn Axelrod
- Dec. 30, 1997, Deed of Gift of Undivided Fractional Interest
- Dec. 31, 1997, Memo from Ildiko DeAngelis to Spencer Crew et. al.
- Dec. 31, 1997, Fax from Norman Newman to Jackie Young with attached gift agreement
- Jan. 9, 1998, Letter from Stacy Kluck to Dr. Herbert Axelrod
- Feb. 3, 1998, Insurance Register transaction Form
- Feb. 3, 1998, Letter from Jeanne Benas to Dr. Herbert Axelrod with attached Insurance Policy
- June 3, 1999, E-mail from Jeanne Benas to Gary Sturm
- Sept. 13, 1999, Outgoing Loan receipt for artifacts
- Sept. 15, 1999, Insurance Register Transaction Form
- Sept. 21, 1999, Note from Gary Sturm to Herbert Axelrod
- Nov. 1, 1999, Letter from Kelly Ford to Dr. Herbert Axelrod
- Jan. 31, 2000, Request for Accession Number Form
- April 19, 2000, Outgoing Loan Receipt for artifacts
- Dec. 15, 2000, Letter from Gary Sturm to Scott Hammond
- Feb. 6, 2001, Letter from Gary Sturm to Herbert Axelrod

Attachment 8:

National Museum of Natural History, Department of Mineral Sciences: Collections Management Policy