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Ms. Lois G. Lerner  
Director of Exempt Organizations Rulings and Agreements  
Internal Revenue Service  
PO Box 2508  
Cincinnati, Ohio

IRS  
EO Classification  
MC 4910DAL  
1100 Commerce Street  
Dallas, Texas 75242

Application of Pew Charitable Trust for Public Charity Status  
Date Advance Ruling Period begins: 11/13/2002  
Advance Ruling Period ends 6/30/2007

Re: REQUEST FOR INVESTIGATION AS TO ABUSIVE TRANSACTIONS

Lady and Gentlemen:

I represent the "Friends of the Barnes Foundation," an organization dedicated to preservation of the famous Barnes Foundation, an educational institution with respect to fine art appreciation and horticulture (hereinafter "the Barnes"). I have some professional experience with disqualifying charitable organizations from tax-exempt status as a result of abusive activities.

As I have been reviewing the trial docket pertaining to the Barnes Foundation, I became bothered with what I saw pertaining to the actions of the Pew Charitable Trusts (hereinafter "PEW"). Accordingly, I am asking that you commence an investigation of the PEW and other cooperating tax exempt foundations to determine if there have been abusive transactions conducted that would jeopardize their tax exempt status, let alone the public charity status that PEW has been provisionally accorded.

PEW's application and corporate reformation roughly coincided in late 2002 with its agreement to underwrite and raise funds for the Barnes Foundation if the Barnes would go to court to break its trust indenture and move its invaluable collection of art to Philadelphia. PEW and others, including the Lenfest Foundation and the Annenberg Foundation, joined together in an effort to raise over \$150 million for the move. What is

more, PEW agreed to underwrite the legal costs of the Barnes Foundation which petitioned the Orphans' Court of Montgomery County to effectuate that agreement to break the Barnes Trust. The question then arises as to whether this is permissible activity constituting a charitable enterprise or whether, in itself, the act of paying these legal fees under these circumstances is within the permissible purposes of the PEW's bylaws and trust provisions.

At roughly, the same time, there was inserted \$107 million in the capital budget of the Commonwealth of Pennsylvania for construction of a new museum in Philadelphia to house the Barnes art collection. The question arises as to who lobbied for the \$107 million, and if charitable entities did so, then do they not lose their tax exempt status? Of course, private foundations can not lobby under applicable law. While Ms. Rebecca Rimel has personally denied that she lobbied for the appropriation, my clients and I doubt her credibility; credibility which was also questioned by the Judge in the Barnes proceedings. In response to my clients' written inquiry, she has not provided a comprehensive answer to questions posed about whether agents of PEW requested the insertion of this money in the capital budget.

Aside from the question of whether PEW or other tax exemptions were at all active in securing the appropriation, there is the next question as to whether the PEW could benefit in its charitable status as a public charity as a recipient of those government funds, thus enabling it to meet various requirements that contributions originate from the "public".

One of Ms. Rimel's contradictory statements under oath in the court proceedings included her contention that the PEW's desire to obtain public charity status was not the reason for its alliance and support of the Barnes. Specifically she testified that the application was "not based on anything that may or may not happen with the Barnes.....It has no implications whatsoever." (Morning Proceedings In re Barnes Foundation, 12/11/03, N.T. pages 29,30)

The plain words of that application tell a different story; that in fact the Barnes project was the keystone in PEW's application for public charity status.

At page 5 and 6 thereof PEW states as follows:

The Barnes Foundation recently filed court petitions in September 2002 to seek approval for the move to Philadelphia. The PCT Division and other prominent area foundations have already received indications that numerous donors have committed more than half of the \$150 million needed for the project, contingent on receiving court approval and on the development of viable plans for the move and the Barnes Foundation's future operations.

While the outcome of the court proceedings is far from certain and will take years to unfold, the PCT Division's credibility in philanthropic circles is critical to the entire Barnes Foundation project. This is because the project requires close

attention to how the \$150 million will be administered and spent. Once the move is approved by the courts, many issues and details will have to be addressed. A site for the Barnes Foundation in Philadelphia must be identified, a facility must be designed and constructed, fundraising for an endowment must be completed and guidelines for its use devised, a business plan must be established to assure the Barnes Foundation future financial stability, and myriad other decisions must be made, all under the intense scrutiny of the courts, numerous City agencies, the public and the media. The PCT Division may be the only institution in Philadelphia with the credibility and the resources to work with the Barnes Foundation, the donors, the City agencies, and other interested parties to make the move happen. Most of the corporate, individual and small foundation donors do not have the infrastructure or expertise to oversee and administer the support for the project. These donors have confidence in the PCT Division's ability to oversee the funding and implementation of the project, and are willing to rely on the PCT Division to carry the project to fruition.

The Barnes project is a prime example of the valuable role that TPCT will play. Although the PCT Division can assist in planning and coordinating a project like this, it is difficult for the Trusts, as private foundations, to carry the project to completion by receiving and administering funding from other sources. For example, to keep the Barnes Foundation open pending court approval, the PCT Division has agreed, with support from the Annenberg Foundation and the Lenfest Foundation, to provide two years of operating expenses during the pendency of the court proceedings. The Annenberg Foundation and the Lenfest Foundation would have preferred to provide their share of the \$3.1 million of operating expenses to the Trusts, and then to rely on the PCT Division's experienced staff to administer those funds, but the Trusts' private foundation status was an obstacle to that approach. Using an unrelated public charity that had not previously participated in the project to administer the operating-expense fund would have cost more than \$150,000 in administrative fees. It was finally agreed that the interim operating expenses would be paid directly to the Barnes Foundation, despite its history of management difficulties.

The same issues will arise to an even greater extent if the Barnes Foundation receives court approval and its move is allowed to proceed. A large number of foundations and donors have pledged to contribute to the Barnes project, and there is a need for a charity other than the Barnes Foundation to receive, hold and administer the funding to assure compliance with the donors' restrictions. The Trusts are the logical choice since the PCT Division is being relied upon by many donors to ensure that their donations will be used effectively and efficiently. Paying a third-party public charity that has not been part of the process to administer the funds would require the payment of fees that would divert substantial amounts from the intended purpose. With public charity status, TPCT could both accept funds and administer them over the multiyear life of the project, without charging a fee.

If TPCT receives recognition of its public charity status, it will assume the PCT Division's role in the Barnes Foundation project. As a public charity, TPCT will be in a position not only to continue the PCT Division's role in planning and coordinating the project, but also to receive grants and contributions from the Trusts and from other donors, and to hold and administer those funds until the Barnes project is completed. Putting TPCT in this position presents a significant advantage because it allows TPCT not only to develop a plan and a vision for the project, but also to raise the funds and then administer the project to ensure that the plan and the shared vision are realized.

Then there is this language on page 9:

The Barnes Foundation project described above is an illustration of the scope of TPCT's program to attract additional support from the community. TPCT will assume responsibility for the Barnes Foundation project upon receiving an advance ruling letter recognizing its public charity status. Going forward, TPCT's public charity status will put it in a position to build on and expand the role that the PCT Division has previously played in raising public support from foundations, businesses, governmental units and individuals for important civic and community programs and initiatives. Accordingly, TPCT will clearly "be so organized and operated as to attract new and additional public or governmental support on a continuous basis" as required by Reg. Section 1.170 A-9(e) (3)(ii)

At this juncture, no one seems to take responsibility for securing the appropriation. The question remains however as to whether it could be characterized as governmental support for PEW.

The time frame which enabled the PEW to become a public charity was incredibly short as it filed with the IRS on December 30, 2002 and received a favorable determination as a public charity on April 24, 2003. With the advance ruling period coming to an end shortly, it is imperative that the IRS investigate the following:

- whether it was permissible for PEW and the other foundations to pay legal expenses of the Barnes to break its own trust indenture and/or whether this represents a conflict of interest;
- whether the PEW and the other foundations violated anti-lobbying requirements when it came to the \$107 million appropriated by the Commonwealth of Pennsylvania to replicate the move and reconstruction of the Barnes;
- whether the PEW has improperly mischaracterized its activities with the Barnes when instead its real aim was to rely on the Barnes project, which remains unfulfilled more than two years after the initial termination date of its agreement with the Barnes;

- whether the PEW's overwhelming reliance on the unfulfilled Barnes project makes it fall short of fulfilling the requirements necessary for public charity status.

Finally, the provisional approval by Ms. Lerner concludes with the following: "This determination is based on evidence that your funds are dedicated to the purposes listed in section 501(c) (3) of the Code. To assure your continued exemption, you should keep records to show that funds are spent only for those purposes. If you distribute funds to other organizations, your records should show whether they are exempt under section 501(c) (3).

Now is an appropriate time for an investigation and audit with respect to whether there should be any continued exemption with respect to the PEW.

I am happy to be of further assistance to you as you proceed in this important matter.

Very truly yours,

Mark D. Schwartz, Esquire