



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Number: **200621029**

Release Date: 5/26/06

Date: March 3, 2006

Contact Person:

Identification Number:

Telephone Number:

Employer Identification Number:
UIL: 4942.03-07

Legend:

A =

B =

C =

X =

Y =

Z =

aa =

bb =

cc =

dd =

Dear _____ :

This letter is in response to your request seeking approval of a set-aside in the amount \$dd under section 4942(g)(2) of the Internal Revenue Code for the tax year ended x.

Facts

On y, B formed A as a charitable trust. A is a grant-making entity, the purpose of which is to distribute grants among charitable organizations designated by the Board of Directors of A.

On z, the Internal Revenue Service issued a determination letter recognizing A as an organization described in section 501(c)(3) of the Code and as a private foundation under section 509(a).

When B died on aa, B's estate consisted of real estate held in C, a revocable trust. Under the terms of the trust, upon B's death, all property held in C would be distributed to A. Following B's death, the trustees distributed this real estate to A. Subsequently, several of B's relatives filed suit challenging the validity of B's wills, certain amendments to C and the funding of C.

Due to this ongoing litigation, you previously asked us for approval of contingent set-asides for the tax years ended bb and cc. We granted both of these requests.

As part of the litigation, the probate court issued a preliminary injunction prohibiting C from making any payments or distributions, and appointed a receiver, pending resolution of the litigation. The receiver's powers do not include the power to make distributions in furtherance of C's charitable purpose. This limitation applies to all of C's assets, including principal and income. As of the date of your request, this litigation was ongoing.

You have estimated that the amount of C's distributable income for the tax year ended x is \$dd. This amount is equal to C's distributable amount which is attributable to the assets or income that are held pursuant to court order and which, but for the court order precluding the distribution of such assets or income, would have been distributed. This amount will be distributed by the last day of the tax year following the tax year in which the litigation is terminated.

Ruling Requested

A contingent set-aside in the amount \$dd, under section 53.4942(a)-(3)(b)(9) of the Income Tax Regulations, will be treated as a qualifying distribution under section 4942(g)(2) of the Code for the tax year ended x.

Law

Section 4942(a) of the Code imposes a tax on the undistributed income of a private foundation which has not been distributed before the first day of the second (or any succeeding) taxable year following such taxable year (if such day falls within the taxable period).

Section 4942(c) of the Code defines "undistributed income" as the amount by which the distributable amount for such taxable year exceeds qualifying distributions made before such time out of such distributable amount.

Section 4942(f) of the Code defines the term "distributable amount" as an amount equal to the sum of the minimum investment return (as adjusted) reduced by the sum of the taxes imposed on such private foundation under subtitle A and section 4940.

Section 4942(e) of the Code defines minimum investment return for any private foundation for any taxable year as five percent of the aggregate fair market value of all assets of the foundation other than those which are used directly in carrying on the foundation's exempt purpose over any acquisition indebtedness with respect to such assets.

Section 4942(g)(1) of the Code defines "qualifying distribution" as any amount paid for tax exempt purposes as defined in section 170(c)(2)(B).

Section 4942(g)(2) of the Code provides that an amount set-aside for an approved purpose may be treated as a qualifying distribution.

Section 53.4942(a)-3(b)(9) of the regulations provides that in the event that a private foundation is involved in litigation and may not distribute assets or income because of a court order, the private foundation may seek and obtain a set-aside for a purpose described in section 53.4942(a)-3(a)(2). The amount of the set-aside shall be equal to that portion of the private foundation's distributable amount which is attributable to the assets or income that are held pursuant to court order and which, but for the court order precluding the distribution of such assets or income, would have been distributed. In the event that the litigation encompasses more than one taxable year, the private foundation may seek additional contingent set-asides.

Analysis

As part of the litigation, the probate court issued a preliminary injunction prohibiting C from making any payments or distributions, and appointed a receiver, pending resolution of the litigation. The receiver's powers do not include the power to make distributions in furtherance of C's charitable purpose. This limitation applies to all of C's assets, including principal and income. Thus, C is involved in litigation and may not distribute assets or income because of a court order, within the meaning of section 53.4942(a)-3(b)(9) of the regulations.

You have estimated that C's distributable amount of income for the year ended x is \$dd. This amount is equal to C's distributable amount which is attributable to the assets or income that are held pursuant to court order and which, but for the court order precluding the distribution of such assets or income, would have been distributed. This amount will be distributed by the last day of the tax year following the tax year in which the litigation is terminated.

Therefore, you satisfy the requirements for a contingent set-aside under section 53.4942(a)-3(b)(9) of the regulations. Consequently, your request for approval of the contingent set-aside in the amount of \$dd for the tax year ended x is approved.

Ruling

A contingent set-aside in the amount \$dd, under section 53.4942(a)-(3)(b)(9) of the regulations, is treated as a qualifying distribution under section 4942(g)(2) of the Code for the tax year ended x.

This ruling is based on the understanding there will be no material changes in the facts upon which it is based.

This ruling does not address the applicability of any section of the Code or regulations to the facts submitted other than with respect to the sections described.

This ruling is directed only to the organization that requested it. Section 6110(k)(3) of the Code provides it may not be used or cited by others as precedent.

This ruling will be made available for public inspection under section 6110 of the Code after certain deletions of identifying information are made. For details, see enclosed Notice 437, *Notice of Intention to Disclose*. A copy of this ruling with deletions that we intend to make

available for public inspection is attached to Notice 437. If you disagree with our proposed deletions, you should follow the instructions in Notice 437.

If you have any questions about this ruling, please contact the person whose name and telephone number are shown in the heading of this letter.

In accordance with the Power of Attorney currently on file with the Internal Revenue Service, we are sending a copy of this letter to your authorized representative.

Sincerely,

Steven B. Grodnitzky
Acting Manager
Exempt Organizations
Technical Group 1

Enclosure
Notice 437