



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

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Release Date: 02/03/2006

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Date: 11/10/2005

UIL: 4942.03-07

Contact Person:

Identification Number:

Telephone Number:

Employer Identification Number:

Legend:

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Dear :

This is in reference to your letter dated September 14, 2005 requesting a ruling that you (the "Foundation") will be allowed to treat a proposed set-aside in the amount of \$x dollars as a qualifying distribution under section 4942(g)(2)(B) of the Internal Revenue Code ("Code").

The information provided indicates the Foundation has been recognized as exempt from federal income tax under section 501(a) of the Code as an organization described in section 501(c)(3) and has been classified as a private foundation within the meaning of section 509(a). The Foundation specializes in making precision grants and charitable initiatives conceived to maximize charitable leverage within its primary service area, an area which has been devastated recently by a natural disaster. For these purposes, charitable leverage refers to enabling organizations with relatively high numbers of volunteers, small paid bureaucracies and fresh, promising approaches to area needs. The trustees implement this policy with a carefully crafted need ascertainment and review process. This process utilizes trustees with expert knowledge and experience in particular fields of interest and itself mobilizes volunteer resources at many points, all to foster the Foundation's basic mission: the relief of human suffering.

The natural disaster has created three barriers to continuing the Foundation's charitable activities in its service area: (1) the disaster has temporarily crippled the Foundation's operations by dispersing its personnel, rendering its headquarters unusable and interfering with communications; (2) most of the grantee organizations and volunteers through which the Foundation carries out its work are similarly disrupted; and (3) the members of the public who directly benefit from the Foundation's expenditures have been displaced from their homes for an indefinite time.

The trustees recognize that various governmental agencies will provide funding for a variety of basic human services and restoration. They also know that fund raising activities throughout the United States and many foreign countries will send large amounts of money into the area. However, the trustees strongly believe that these efforts, as essential as they may be, will not supplant the need for carefully targeted grants dispensed by its experienced system which is specifically oriented toward its particular service area.

The Trustees propose creation of a set-aside in the amount of \$x dollars which will be expended over a period of thirty-six (36) months commencing in May 2006 for critical, volunteer-oriented programs and medical research in the service area to better achieve the Foundation's mission. This fund would be created from amounts which the Foundation would otherwise distribute in September, October, November and December of the current calendar year. If restoration and repopulation of the service area develops more rapidly than anticipated the Foundation will endeavor to start the review and disbursements process more rapidly. The fund will assist in restoring the Foundation's systematic charitable triage procedures, assess the most important expenditures for the service area not fully addressed by government programs and foster a spirit of volunteerism in the service area.

Section 4942 of the Code imposes an excise tax on the undistributed income of a private foundation for any taxable year. Under section 4942(c) the term "undistributed income" means the amount by which the distributable amount for such tax year exceeds the qualifying distributions made out of such distributable amount.

For purposes of determining a private foundation's "qualifying distributions," section 4942(g)(2)(B)(i) provides that an amount set aside for a specific project will be treated as a qualifying distribution if it is paid for the specific project within five years and the private foundation establishes to the satisfaction of the Secretary of the Treasury that the project is one that can better be accomplished by such a set-aside than by an immediate payment of funds.

Section 53.4942(a)-3(b)(1) of the Foundation and Similar Excise Taxes Regulations provides that an amount set aside for a specific project that furthers the purposes described in section 170(c)(1) or 2(B) of the Code may be treated as a qualifying distribution in the year in which set aside (but not in the year actually paid), if the requirements of section 4942(g)(2) of the Code and the regulations there under are satisfied. To meet such requirements, the private foundation must establish to the satisfaction of the Commissioner that the amount set aside will be paid for the specific project within 60 months after it is set aside and the set-aside satisfies the suitability test.

Section 53.4942(a)-3(b)(2) of the regulations provides that the suitability test is satisfied if the private foundation establishes to the satisfaction of the Commissioner that the specific project for which the amount is set aside is one that can be better accomplished by the set-aside than by the immediate payment of funds. The regulation goes on to provide that specific projects that can be better accomplished by the use of a set-aside include, but are not limited to, projects in which relatively long-term grants or expenditures must be made in order to assure the continuity of particular charitable projects or program-related investments.

Based on the information provided, we have concluded that the funds set-aside by the Foundation for relief from the affects of the natural disaster in the Foundation's service area will satisfy the requirements of the suitability test under section 4942(g)(2)(B)(i) and section 53.4942(a)-3(b)(2) of the regulations and constitute "qualifying distributions" under section 4942(g)(2)(A) of the Code.

This ruling is based on the understanding that the amount set aside will be paid for the specific project within 60 months after it is set aside and that the set-aside will be evidenced by the entry of a dollar amount on the books and records of the Foundation as a pledge or obligation to be paid at a future date or dates.

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.

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

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.

Sincerely,

Robert C. Harper, Jr.
Manager, Exempt Organizations
Technical Group 3

Enclosure
Notice 437