



Department of the Treasury  
Internal Revenue Service  
Tax Exempt and Government Entities  
P.O. Box 2508  
Cincinnati, OH 45201

Date:  
11/28/2022  
Employer ID number:

Person to contact:  
Name:  
ID number:  
Telephone:  
Fax:

Number: **202308013**  
Release Date: 2/24/2023

UIL: 4942.03-07

**LEGEND**

H = State  
J = Name  
K = City  
L = Year  
M = Year  
N = Year  
p dollars = Amount  
q dollars = Amount  
r dollars = Amount  
s dollars = Amount  
t dollars = Amount

Dear :

**Why you are receiving this letter**

We received your request for approval of a set-aside under Internal Revenue Code (IRC) Section 4942(g)(2). Based on the information furnished, your request is approved.

You are recognized as tax-exempt under IRC Section 501(c)(3) and as a private foundation under IRC Section 509(a).

**What you need to do**

Document your approved set-aside(s) in your records as pledges or obligations. You must pay the set-aside amounts within 60 months after the date of the first set-aside, as required under IRC Section 4942(g)(2).

Take into account the amounts set aside when determining your minimum investment return under IRC Section 4942(e)(1)(A) and the income attributable to your set-asides when computing your adjusted net income under IRC Section 4942(f).

**Description of set-aside request**

You are incorporated in the state of H for the purpose of establishing, operating, sponsoring, and managing programs that provide educational services and resources to the general public.

You have requested a set-aside in the amount of r dollars (consisting of s dollars for an initial set-aside for the

tax year ending L and an addition of t dollars to the initial set-aside for the tax year ending M), in connection with the construction of J in K to be used directly in carrying out your exempt purposes. It is anticipated J will be completed by the end of N.

J will display cultural and educational exhibits, and will house a , a cafe, and a gift shop. It will also offer a number of multi-purpose spaces allowing for music, theater, and art performances and exhibits. In addition, J will house an atrium, which will include a special area for and , an auditorium, flexible , classrooms, and indoor and outdoor gathering spaces for cultural engagement. Once J is constructed, you will operate and maintain J, which will be opened to the general public.

The estimated cost for construction and completion of J is approximately p dollars and it is anticipated that future funds for completion of the project will come from individual donors. The land for J has already been acquired and construction thereon has begun. In addition, you have already funded and expended q dollars to date for the project.

The construction of J is accomplished better by the set aside approach rather than immediate payment of funds because although the construction on the project began in L, it is anticipated that the construction of J will not be completed until N. Thus, the activities involved in the construction, furnishing and completion of J, will take place over a period that spans years. Moreover, as is customary and appropriate in the construction of a building facility, payments will be made by you on an "as work is done" basis, which will promote the proper and timely completion of J. It is anticipated that expenditure of the requested set-aside for the construction, furnishing and completion of J will not be made by you until the calendar years M and N. Given the foregoing, the funding of the construction project can be better accomplished by the requested set-aside than the immediate payment of funds. All decisions relative to construction, operation and maintenance of J and your programs will be made by your governing body.

You provided a statement indicating that the set-aside will actually be paid within a specified time period not to exceed 60 months from the date of the first set aside.

#### **Basis for our determination**

IRC Section 4942(g)(2)(A) states that an amount set aside for a specific project, which includes one or more purposes described in IRC Section 170(c)(2)(B), may be treated as a qualifying distribution if it meets the requirements of IRC Section 4942(g)(2)(B).

IRC Section 4942(g)(2)(B) states that an amount set aside for a specific project will meet the requirements of this subparagraph if, at the time of the set-aside, the foundation establishes that the amount will be paid within five years and either clause (i) or (ii) are satisfied.

IRC Section 4942(g)(2)(B)(i) is satisfied if, at the time of the set-aside, the private foundation establishes that the project can better be accomplished using the set-aside than by making an immediate payment.

Treasury Regulation (Treas. Reg.) Section 53.4942(a)-3(b)(1) provides that a private foundation may establish a project as better accomplished by a set-aside than by immediate payment if the set-aside satisfies the suitability test described in Treas. Reg. Section 53.4942(a)-3(b)(2).

Treas. Reg. Section 53.4942(a)-3(b)(2) provides that specific projects better accomplished using a set-aside include, but are not limited to, projects where relatively long-term expenditures must be made requiring more than one year's income to assure their continuity.

In Revenue Ruling 74-450, 1974-2 C.B. 388, an operating foundation converted a portion of newly acquired land into a public park under a four-year construction contract. The construction contract payments were to be made mainly during the final two years. This constituted a "specific project." The foundation's set-aside of all its excess earnings for four years was treated as a qualifying distribution under IRC Section 4942(g)(2).

**Additional information**

This determination is directed only to the organization that requested it. IRC Section 6110(k)(3) provides that it may not be used or cited as a precedent.

Visit [www.irs.gov/setasides](http://www.irs.gov/setasides) for more information.

We'll make this determination letter available for public inspection after deleting personally identifiable information, as required by IRC Section 6110. Enclosed are Letter 437, Notice of Intention to Disclose -Rulings, and a copy of the letter that shows our proposed deletions.

- If you disagree with our proposed deletions, follow the instructions in the Letter 437 on how to notify us.
- If you agree with our deletions, you don't need to take any further action.

Keep a copy of this letter for your records.

If you have questions, you can call the contact the person shown above.

Sincerely,

Stephen A. Martin  
Director, Exempt Organizations  
Rulings and Agreements

Enclosures:  
Redacted Letter 4797  
Letter 437