



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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Number: **200534024**

Release Date: 8/26/2005

SE:T:EO:RA:T:1

Date: June 3, 2005

Contact Person:

Identification Number:

Telephone Number:

UIL 4942.03-07

Legend:

A =

B =

x =

y =

Z =

gg =

hh =

Dear Sir or Madam:

This letter is in response to your request dated December 1, 2004 seeking approval of a set-aside of funds in the amount \$gg under section 4942(g)(2) of the Internal Revenue Code for the taxable year ended x.

Facts

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

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

The specific donees, and the amounts distributed to each donee, have changed from time to time, in accordance with the terms of the corporation's Articles of Incorporation and bylaws.

Applicable state law requires private foundations to distribute income at such times and in such manner as not to subject the private foundation to tax under section 4942 of the Code.

You wish to set aside a grant totaling \$ggg to be paid to Z. Z is recognized as an organization described in section 501(c)(3) of the Code, and is treated as a publicly supported organization within the meaning of sections 509(a)(1) and 170(b)(1)(A)(vi) of the Code. No additions to the set-aside are planned.

The purpose of the grant is to restore and renovate an historic site, now owned by Z. A wishes to restore the site, long vacant, to its appearance in hh, its most significant time period. It is anticipated that the restored site will include at least one museum.

A has represented that the set-aside of \$ggg for the year ended x will be evidenced by the Board of Directors through the entry on the books and records of the corporation of the dollar amount of the set-aside as a pledge to be paid as a qualifying distribution to Z within the meaning of section 53.4942(a)-3(b) of the regulations. A statement of A's Board of Directors that the amount set-aside for the facilities project as described above will actually be paid for this project within 60 months is included in this request.

A believes that, due to the extent and cost of repairs and renovations needed for the Z project, grants from the community at large must form an essential and significant part of the restoration project funding. A states that the proposed grant, as part of a matching-grant program, is intended to simulate grants to Z from the community at large. By providing a twenty-nine month period during which Z may receive commitments from members of the community, A hopes to give Z adequate time to publicize the renovation, as well as the financial needs of Z to generate the necessary community financial support. Also, because of A's concern with the preservation of the historical and architectural features of Z, A believes it is crucial to retain a degree of control over the renovation process. By making the disbursement of the funds dependent upon approval of drawings, plans, and specifications of the restoration project, A believes it can best meet the goal of preserving Z.

Ruling Requested

A set-aside of funds in the amount \$ggg, under section 53.4942(a)-(3)(b)(2) of the Foundation and Similar Excise Taxes regulations, will be treated as a qualifying distribution under section 4942(g)(2) of the Code for the taxable 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), in substance and generally, 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), in substance and generally, defines "qualifying distribution" as any amount paid for tax exempt purposes as defined in section 170(c)(2)(B) of the Code.

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

Section 4942(g)(2)(B)(i) of the Code provides that an amount set-aside for a specific project may be treated as a qualifying distribution if, at the time of the set-aside, the foundation establishes to the satisfaction of the Secretary that the amount will be paid for the specific project within five years, and the project is one which can be better accomplished by such set-aside rather than by immediate payment of funds (the "suitability test").

Section 53.4942(a)-3(b)(2) of the Foundation and Similar Excise Taxes regulations provides that the suitability test is satisfied if the foundation establishes that the specific project is one 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. The regulation cites as an example of a suitable project a plan to fund a specific research program that is of such magnitude as to require an accumulation of funds before beginning the research, even though not all of the details of the program have been finalized.

Analysis

A meets the suitability test described in section 4942(g)(2)(B)(i) of the Code and section 53.4942(a)-3(b)(2) of the regulations. A is an exempt private foundation, and A is setting aside \$ggg for a specific project that accomplishes A's charitable purpose under section 170(c)(2)(B) of the Code. The Service has previously determined that A has regularly provided significant support to various operating charities. This set-aside will allow A to set aside funds for Z's capital campaign so that Z will be able to succeed in construction plans for renovating the Z project before commencing on this major project. The specific project described above for which the set-aside is being made is designed to further and enhance Z's charitable activities.

The developments and improvements described above can better be accomplished by a set-aside rather than by immediate payment of funds. This conclusion derives from the long-term nature and extent of the project, as well as the manner in which the Foundation intends to fund the project.

Accordingly, the suitability test of section 53.4942(a)-3(b)(2) of the regulations is satisfied.

Ruling

Based on the foregoing, we rule that a set-aside of funds in the amount \$ggg, under section 53.4942(a)-(3)(b)(2) of the regulations, is treated as a qualifying distribution under section

4942(g)(2) of the Code for the taxable 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,

Lawrence M. Brauer

Debra J. Kaweck
Manager, Exempt Organizations
Technical Group 1

Enclosure
Notice 437