Internal Revenue Service

Department of the Treasury

Washington, DC 20224

Uniform Issue List: 4942.03-07

Contact Person:

199907028

Telephone Number:

In Reference to: OP:E:EO:T:2

Date:

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Dear Applicant:

This is in reply to your ruling request of July 27, 1998, requesting approval of a proposed set-aside of your funds under section 4942(g)(2)(B)(i) of the Internal Revenue Code and section 53.4942(a)-3(b)(2) of the Foundation and Similar Excise Tax Regulations.

You, F, are recognized as exempt from federal income tax under section 501(c)(3) of the Code and as a private foundation under section 509(a) of the Code. Your tax years end on December 31.

You propose to set aside, under section 4942(g)(2)(B)(i) of the Code, a total amount of "s" dollars, in yearly amounts of "y", beginning with respect to the distributions required in 1999 from your 1998 distributable amount under section 4942(d) of the Code.

Your specific project is the acquisition of land for a new building and the construction of that new building. You will own the building and use it as your headquarters, but most of the space will be rented by you at below cost to charitable programs that are conducted by organizations exempt from federal income tax under section 501(c)(3) of the Code or by governmental agencies. This facility will include some items whose costs will be shared by you and your tenants, for example, copiers and conference rooms.

You represent that all of the amounts to be set aside for this specific project will be paid out by you for this project within 60 months from the time when your first amount is set aside.

You indicate that the cost of this specific project can better be accomplished by the use of a set-aside of your funds, rather than by immediate payment, in order to avoid interruption of your ongoing funding of the charitable programs of other charities and to meet a restriction under your state law that hinders spending of your endowment.

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Section 501(c)(3) of the Code provides for the exemption from federal income tax of nonprofit organizations organized and operated exclusively for the charitable and/or other exempt purposes stated in that section.

Section 509(a) of the Code describes organizations exempt from federal income tax under section 501(c)(3) of the Code that are private foundations subject to the private foundation provisions of Chapter 42 of the Code.

Section 4942 of the Code imposes excise tax on any private foundation that does not make annual qualifying distributions of its annual distributable amount for exempt purposes.

Section 4942(g)(1) of the Code provides that, in general, a qualifying distribution is any amount (including reasonable and necessary administrative expenses) paid to accomplish, or to acquire an asset used directly in carrying on, one or more of the purposes described in section 170(c)(2)(B) of the Code, which includes charitable purposes.

Section 4942(g)(2)(A) of the Code provides that an amount that is "set aside" for a specific project within one or more purposes of section 170(c)(2)(B) of the Code may be treated as a qualifying distribution if it meets the set-aside requirements of section 4942(g)(2)(B) of the Code.

Section 4942(g)(2)(B) of the Code provides, in pertinent part, 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 private foundation establishes to the satisfaction of the Secretary that the amount set aside will be paid for the specific project within five years and that section 4942(g)(2)(B)(i) of the Code (the suitability test) is met.

Section 4942(g)(2)(B)(i) of the Code provides that, at the time of the set-aside, the private foundation must establish to the satisfaction of the Secretary that the project is one which can better be accomplished by such set-aside rather than by immediate payment of funds.

Section 53.4942(a)-3(b)(1) of the Foundation and Similar Excise Tax Regulations provides that an amount set aside for a specific project for one or more of the purposes in section 170(c)(1) or 170(c)(2)(B) of the Code, may be treated as a qualifying distribution in the year in which such amount is set aside (but not in the year in which actually paid), if the requirements of section 4942(g)(2)(B)(i) of the Code are met, the foundation establishes 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 otherwise meets the suitability test of section 53.4942(a)-3(b)(2) of the regulations.

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Section 53.4942(a)-3(b)(2) of the regulations provides that its suitability test for a set-aside is met if the private 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. The regulation cites, as an example of a suitable project, a plan to erect a building to house the direct charitable, educational or similar exempt activities of the private foundation (such as a museum building in which paintings are to be hung), even if the exact location and architectural plans have not been finalized.

Section 53.4942(a)-3(b)(7)(i) of the regulations provides that a private foundation must obtain Internal Revenue Service approval of its set-aside of income under the suitability test by applying before the end of the tax year in which the amount is set aside.

In your case, we find that your above specific project of a new building meets the requirements for a set-aside under the suitability test of section 4942(g)(2)(B)(i) of the Code and section 53.4942(a)-3(b)(2) of the regulations.

First, you have timely sought approval of the set-asides of income in advance of the time when the amounts are to be set-aside, in accordance with section 4942(g)(2)(B)(i) of the Code and section 53.4942(a)-3(b)(7)(i) of the regulations.

Second, your set-aside amounts will be used for a specific project within the charitable purposes of section 170(c)(2)(B) of the Code, in accordance with section 4942(g)(2)(A) of the Code and section 53.4942(a)-3(b)(2) of the regulations. Your specific charitable project is a new building to house charitable programs.

Third, you represent that your amounts to be set aside for this specific project will be paid out for this project within 60 months from the time when the first amount is set aside, as required by section 4942(g)(2)(B) of the Code and section 53.4942(a)-3(b)(1) of the regulations.

Fourth, this new building project is better accomplished by your set-aside of income, rather than by immediate payment, in accordance with the suitability test of section 4942(g)(2)(B)(i) of the Code and section 53.4942(a)-3(b)(2) of the regulations, because this set-aside will avoid any interruption of your funding of other ongoing charitable programs and any restriction on the spending of your endowment.

Accordingly, we rule that your amounts of "s" dollars to be set aside for this specific project will be qualifying distributions under section 4942(g)(2)(B)(i) of the Code in your tax years when such amounts are set aside.

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Section 53.4942(a)-3(b)(8) of the regulations provides that any set-aside approved by the Internal Revenue Service must be evidenced by the entry of a dollar amount in your books and records as a pledge or obligation to be paid at a future date or dates. Further, the amount of a set-aside must be taken into account in determining your minimum investment return (see section 53.4942(a)-2(c)(1) of the regulations), and any income attributable to a set-aside must be taken into account in computing your adjusted net income (see section 53.4942(a)-2(d) of the regulations).

Because this ruling letter could help to resolve any questions, please keep it in your permanent records, and include a copy in your annual return, Form 990-PF.

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

Sincerely,

(signed) Garland A. Carter

Garland A. Carter
Chief, Exempt Organizations
Technical Branch 2

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