199922067

Internal Revenue Service

Department of the Treasury

SIN 4942.03-07
No Third Party Contacts

Washington, DC 20224

Contact Person:

Telephone Number:

In Reference to: OP:E:EO:T:3

Date:
MAR 8 1999

Legend:

M =
N =
x =
y =
z =

Dear Applicant:

This refers to your request for approval of proposed set-asides pursuant to section 4942(g)(2)(B)(i) of the Internal Revenue Code (the "Code").

Our records indicate that you have been recognized as exempt under section 501(c)(3) of the Code. Further, our records indicate that you are classified as a private foundation under section 509(a) and not a private operating foundation under section 4942(j)(3). Your primary activity is the preservation and housing of historical maps, documents and objects which collection is housed in historical buildings that you operate as research centers and museums available for public visitation and study.

You have recently acquired real property which contains the one-story remains of a building (the "Property"). The Property is located in a historic district subject to regulation with respect to building design, among other things. The Property is contiguous to your other properties, M and N, and is presently used for your parking needs. M is your research and reference library. N is a collection of historic buildings you own and operate.

You plan to construct a five-story building on the Property which you will use for storage of your collection of research

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materials and historic objects, meeting rooms suitable for lectures and seminars, staff office space, and parking at the ground level. You anticipate that the construction will cost approximately x dollars and will be completed in several years.

You propose to set aside up to y dollars for fiscal year ending March 31, 1999. Further set-asides and expenditures of approximately z dollars will be required to complete the project. The first set-aside funds will be used for architectural and engineering study, conceptual designs and obtaining the necessary government approvals prior to commencing final design and construction. The amount set aside for the project will be paid within 60 months after the date of the first set-aside.

Section 4942(a) of the Code imposes a tax on the undistributed income of a private foundation for any taxable year, which has not been distributed before the first day of the second taxable year following such taxable year.

Section 4942(c) of the Code defines the term "undistributed income", with respect to any private foundation for any taxable year as of any time, as the amount by which the distributable amount for such taxable year, exceeds the qualifying distributions made before such time out of such distributable amount.

Section 4942(g)(1) of the Code defines the term "qualifying distribution," generally, as any amount paid to accomplish one or more purposes described in section 170(c)(2)(B) of the Code or any amount paid to acquire an asset used (or held for use) directly in carrying out one or more purposes described in section 170(c)(2)(B).

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

Section 4942(g)(2)(B) of the Code provides, in relevant part, that an amount set aside for a specific project shall meet the requirements of this subparagraph 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 5 years and that the project is one which can better be accomplished by such set-aside than by immediate payment of funds.

Section 53.4942(a)-3(b)(1) of the Foundation and Similar Excise Tax Regulations (the "regulations") provides that an amount set aside for a specific project that is for one or more of the purposes described in section 170(c)(1) or (2)(B) may be treated as a qualifying distribution in the year in which set aside (but not in the year in which actually paid), if the requirements of section 4942(g)(2) and this paragraph (b) are satisfied. The requirements of this paragraph (b) are satisfied if the private 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 satisfies the suitability test described in subparagraph (2). If the suitability test is otherwise satisfied, the 60 month period may, for good cause shown, be extended by the Commissioner.

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. 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. Such project include, for example, a plan to erect a building to house the direct charitable, educational, or other similar exempt activity of the private foundation, even though the exact location and architectural plans have not been finalized.

As represented, the amount you will set aside will be used to construct a building which will be used in your operations in furtherance of exempt purposes described in section 170(c)(2)(B) of the Code. Also, the amounts set aside will be distributed within a 5-year period. Therefore, we find that your proposed set-aside meets the requirements of section 4942(g)(2)(B) of the Code and section 53.4942(a)-3(b)(2) of the regulations.

Accordingly, we rule that the proposed set-aside of x dollars for fiscal year ending March 31, 1999 will be treated as a "qualifying distribution" within the meaning of section 4942(g)(1) of the Code.

Our approval of your set-aside for your fiscal year ending March 31, 1999, is based upon our understanding that the set-aside will in fact be pledged for the indicated specific project, and that the pledged funds will be expended within the 5-year period required by section 4942(g)(2)(B)(i) of the Code.

This ruling applies only to income set aside for that particular taxable year.

Under section 53.4942(a)-3(b)(8) of the regulations, your proposed set-aside must be evidenced by the entry of a dollar amount on your books and records as a pledge or obligation to be paid at a future date or dates. Any amount which is set aside shall be taken into account for purposes of determining your minimum investment return under section 53.4942(a)-2(c)(1) of the regulations and any income attributable to such set-aside must be taken into account in computing adjusted net income under section 53.4942(a)-2(d).

We are informing the EP/EO key district office of this ruling. Because this letter could help resolve any questions about your exempt status, you should keep it in your permanent records. Also, you should include a copy of this ruling in filing your Form 990-PF for the particular tax years.

If you have any immediate questions about this ruling, please contact the person whose name and telephone number are shown in the heading of this letter. For other matters, including questions concerning reporting requirements, please contact the EP/EO Customer Service office at (a toll free number) or send correspondence to the following address: Internal Revenue Service, EP/EO Customer Service,

This ruling does not express or imply an opinion as to the tax consequences of the transactions or the organization's qualification under other provisions of the Code. Also, this ruling 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,

/S/

Robert C. Harper, Jr.
50-03055
Chief, Exempt Organizations
Technical Branch 3