



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

Date:
02/12/2024
Employer ID number:

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

Release Number: 202419027
Release Date 5/10/2024

LEGEND

UIL: 4942.03-07

C = Date
D = Date
E = Name
F = City
G = Date
x dollars = Amount
y 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 were formed under a trust agreement on C and are operated exclusively for religious, charitable, scientific, literary, or educational purposes. You are seeking a set-aside for tax year ending D for x dollars for a large construction project consisting of the redesign of E, a very large urban sculpture garden in F. The total cost of the construction project is in excess of y dollars. Several years ago, you had funded the creation of E.

The purpose of the construction project is to unify the sections of E and make it one seamless sculpture garden. The redesign will create new pedestrian walkways, planting, and seating spaces. Pathways and circulation will

be extended, and the material palette will match that of existing sections to create a consistent experience. The construction project will provide visitors with an expansive and uninterrupted continuous landscape. The construction project will require multiple steps including pavement removal, underground utility work, curb work, sidewalk creation, continuation of the granite wall inside the garden, soil import and installation, irrigation, paving path placement, lighting and security cameras setup, planting turf and sculpture installation.

You have been preparing for the construction project, but it was delayed as you awaited receiving the necessary governmental approvals which you had anticipated obtaining last year. Instead, approval was just received. The construction project is now expected to be completed in G.

The immediate payment of funds in this tax year is not possible because construction cannot commence until the end of the current fiscal year and the bulk of the construction costs because of the nature of the project will be paid during your next fiscal year.

You stated that the amounts to be set aside will actually be paid within a specified period of time that ends not more than 60 months after the date of the first set-aside. You have no planned additions to the set-aside after its initial establishment.

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 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.

We have sent a copy of this letter to your representative as indicated in Form 2848, Power of Attorney and Declaration of Representative.

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
cc: