

Internal Revenue Service
Director, Exempt Organizations

Department of the Treasury
P.O. Box 2508 - Room 4122
Cincinnati, Ohio 45201

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Employer Identification Number:

Person to Contact - ID#:

Contact Telephone Numbers:

Phone

Fax

UIL

4942.03.07

LEGEND

B= a state
C= a school
s= a dollar figure
t= a dollar figure
u= a dollar figure
v= a dollar figure
w= a dollar figure
x= a percentage

Dear :

By letter dated August 15, 2008, you requested a ruling that set-asides in the amounts of \$s and \$t for the taxable years ending September 30, 2008, and September 30, 2009, respectively, meet the requirements of Section 4942(g)(2)(B)(i) and accordingly constitute qualifying distributions under section 4942(g).

FACTS

You are incorporated under the laws of the State of B, are exempt from federal income tax under section 501(c)(3) of the Code and are classified as a private non-operating foundation under section 509(a).

You have made pledges of \$s and \$t to the capital campaign of C, an educational institution exempt under Section 501(c)(3) of the Internal Revenue Code. The campaign's goals are to raise \$u for upgrading and replacement of campus facilities, \$v for C's endowment, and \$w for the Annual Fund. You intend that the grant of \$s should be expended by C on the new construction, and the grant of \$t should be applied to the building endowment.

The payment of the set-aside of \$s for the taxable year ending September 30, 20 , is contingent upon the commencement of construction on the new structures; this contingency is expected to be met no later than April 30, 20 . The payment of the set-aside of \$t for the taxable year ending September 30, 20 , is contingent upon the completion of the project and issuance of a certificate of occupancy for the classroom buildings, and is expected to occur no later than December 31, 2010. The pledges were made in the critical "quiet phase" of the capital campaign; had C failed to achieve the "quiet phase" fundraising goal of x percent of the total, it could not have commenced the "public phase" of the capital campaign, currently under way. In order to help C at this critical juncture, you committed yourself to two individual distributions, each of which is roughly equal to your entire distributable amount for a taxable year.

The difference between these and your typical distributions in support of other charitable organizations is expressed in orders of magnitude. It was not possible for you to make distributions currently of such large amounts. You also did not wish to make a current distribution with donor-imposed restrictions on the use of the funds, because of the uncertainty at the time about the success of the capital campaign. The timing of the payments will ensure that grant \$s is applied to the costs of construction and grant \$t to the building endowment.

LAW

Section 4942(g)(1) of the Code defines "qualifying distribution" as (a) any amount paid to accomplish one or more purposes described in section 170(c)(2)(B), other than any contribution to (i) an organization controlled by the foundation or one or more disqualified persons, or (ii) a private foundation which is not an operating foundation, except as otherwise provided; (b) any amount paid to acquire an asset used 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, for all taxable years beginning on or after January 1, 1975, an amount set aside for a specific project within one or more purposes of section 170(c)(2)(B) may be treated as a qualifying distribution if the amount meets the requirements of section 4942(g)(2)(B).

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 the amount set aside will be paid for the specific project within five years, and the specific project is one that can better be accomplished by the set-aside of income rather than by the immediate payment of funds (the "suitability test").

Section 53.4942(a)-3(a)(2)(iii) defines as a qualifying distribution any amount set aside within the meaning of paragraph (b) of section 3.

Section 53.4942(a)-3(b)(1) of the Foundation and Similar Excise Tax Regulations provides that the amounts of income 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 qualifying distributions for the tax year(s) in which such amounts are set aside (but not in the tax year in which actually paid) if the requirements of section 4942(g)(2) and paragraph (b) are satisfied. The requirements of paragraph (b) are satisfied if the foundation establishes to the satisfaction of the Commissioner the amount set aside will be paid for the specific project within 60 months after it is set aside, and (i) the set-aside otherwise meets the suitability test of section 53.4942(a)-3(b)(2) or (ii) the foundation satisfies the cash distribution test.

Section 53.4942(a)-3(b)(2) of the regulations provides that the suitability test for a set-aside is met if the foundation establishes 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 examples of suitable projects a plan to purchase an additional group of paintings offered for sale only as a unit and a plan to fund a large research program, both of which projects involve expenditure of more than one year's income.

Section 53.4942(a)-3(b)(7)(i) 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 Revenue Ruling 77-7, 1977-1 CB 354, the term "specific project" as defined in section 53.4942(a)-3(b)(2) of the Excise Tax Regulations was held to include a building project to be undertaken by a public charity unrelated to the foundation making the set-aside.

ANALYSIS

You have sought timely approval of its set-asides of income in accordance with Section 53.4942(a)-3(b)(7)(i).

As required by Section 4942(g)(2)(A) of the Code and Section 53.4942(a)-3(b)(1) of the Regulations, your proposed set-asides will be for specific projects for one or more of the purposes in section 170(c)(2)(B) of the Code. The set-asides of \$s and \$t are for a building project to be undertaken by a public charity unrelated to you, is a "specific project" of the kind described in Revenue Ruling 77-7.

You have represented that the amount set-aside for this specific project will be paid out within 60 months from the set-aside, as required by section 4942(g)(2)(B)(i) of the Code and section 53.4942(a)-3(b)(1) of the regulations.

Your project can better be accomplished by the set-asides of income rather than by the immediate payment of funds. 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. In order to render timely material assistance to C in achieving the fundraising goal of the "quiet phase" of its capital campaign, it was necessary for you to commit yourself to an expenditure of more than one year's income. Your project therefore satisfies the suitability test as set forth in Section 4942(g)(2)(B)(i) of the Code and Section 53.4942(a)-3(b)(2) of the Regulations.

RULING

Based on the foregoing, The set-asides of \$s and \$t for the taxable years ending March 31, 20 , and March 31, 20 , respectively, meet the requirements of Section 4942(g)(2)(B)(i) and accordingly constitute qualifying distributions under section 4942(g).

We direct your attention to Section 53.4942(a)-3(b)(8) of the regulations, entitled "Evidence of Set-Aside." This section provides that any set-aside approved by the Internal Revenue Service shall be evidenced by the entry of a dollar amount in the books and records of a private foundation as a pledge or obligation to be paid at a future date or dates. Further, the amount of the set-aside must be taken into account in determining the foundation's 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 adjusted net income (see section 53.4942(a)-2(d) of the regulations).

This ruling is based on the understanding there will be no material changes in the facts upon which it is based. Any changes that may have a bearing on your tax status should be reported to the Internal Revenue Service. This ruling does not address the applicability of any section of Code or regulations to the facts submitted other than with respect to the sections described.

This ruling letter is directed only to the organizations that requested them. Section 6110(k)(3) of the Code provides that they may not be used or cited as precedent.

Please keep a copy of this ruling letter in your permanent records.

If you have any questions about this ruling, please contact the persons whose name and telephone number are shown above in the heading of this letter.

Sincerely yours,

Robert Choi
Director, Exempt Organizations
Rulings and Agreements