



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

200411049

TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

Date: DEC 16 2003

Contact Person:

Identification Number:

Telephone Number:

UIL. 4942.03-07

TEUB4

Employer Identification Number:

Legend:

A=

B=

C=

D=

E=

F=

xx=\$

yy=\$

Dear Applicant:

We have considered your request dated October 15, 2003, that a proposed set-aside be treated as a qualifying distribution within the meaning of section 4942(g)(2) of the Internal Revenue Code.

Your Foundation (the "Foundation") has been recognized as exempt from federal income tax under section 501(c)(3) of the Code and has been classified as a private non-operating foundation within the meaning of section 509(a) of the Code.

The Foundation makes charitable contributions to various section 501(c)(3) organizations, including A schools. Specifically, The Foundation makes charitable contributions to the A, and the F, in E. The Diocese sponsors the B, an organization exempt under section 501(c)(3), which supports two A schools in E; the C and D.

Specifically, The Foundation is funding reading, literacy, and language development programs at the Pre-K through 3rd grade levels at the C and D in E. The Foundation wishes to set-aside \$xx for the creation of an intensive language acquisition program and building an addition to the D school through the B. These Schools serve a distressed, low-income African-American community in E, and many of their students suffer from a lack of language development in their early years. The set-aside will support: i) capital projects, including the construction of a building to house Pre- K and Kindergarten classes and after school programs; and ii) the implementation and operating budget of the language program in both schools' curriculum and

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after school program.

The Foundation's Board of Directors have created plans to meet these two schools' long-term facilities needs, and operating budget for their language program. The components of the facilities project are fully described in the Foundation's request. Building a facility is expected to take more than a year. The Board has determined that this facilities project, and the language program, can best be accomplished over a period of several years, using funds set aside in 2003 for this purpose.

B will construct a building on the grounds of D that will house Pre-K, Kindergarten, and after school programs as well as a computer lab, and early childhood resource center. The new building will be approximately 5200 square feet and is estimated to cost \$yy to construct. Additional costs associated with maintenance, plant equipment and repairs are not included in this figure.

The Foundation expects to support the implementation and operation of the language acquisition program and the construction of this building with the set-aside that will be structured in a way to leverage other funds. The B has proposals to other private foundations under consideration for capital support. It is also actively building the donor base and soliciting individuals for contributions to this project.

Accordingly, the Board of Directors of the Foundation by resolution has approved a set-aside of funds in the amount of \$xx. They have further authorized this request to the Internal Revenue Service for approval of the suitability of the set-aside and confirmation of its status as a qualifying distribution of the Foundation for the year 2003. The Foundation will determine if it needs to add to the set-aside by the fall of 2004 after the B has fully completed its planning process for the language acquisition program and the construction of the building that will house its pre-K, Kindergarten and after school classes. A statement by the Foundation'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.

Section 4942 of the Code imposes an excise tax on private foundations that fail to make certain minimum annual "qualifying distributions."

Section 4942(g)(1) of the Code defines a "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; or (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 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) of section 4942(g)(2).

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)(1) of the Foundation and Similar Excise Taxes 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 (c)(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 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 (i) the set-aside satisfies the suitability test, or (ii) the foundation satisfies the cash distribution test.

Section 53.4942(a)-3(b)(2) of the 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.

Section 53.4942(a)-3(b)(7)(i) of the regulations lists the approval and information requirements under the suitability test of section 4942(g)(2)(B)(i) and subparagraph (2) of Section 53.4942(a)-3(b) of the regulations.

The \$xx set-aside for the project listed above is being set aside for a specific project that accomplishes a charitable purpose under section 170(c)(2)(B) of the Code. The Service has previously determined that the Foundation has regularly provided significant support to various operating charities, including various Catholic schools. A set-aside will allow the Foundation to complete construction plans for both aspects of the project before commencing. The specific projects listed above for which the set-aside is being made are all designed to further and enhance these charitable activities. Accordingly, the suitability test of section 53.4942(a)-3(b)(2) of the regulations is satisfied.

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.

Based on the foregoing, we rule that the set-aside of \$xx on the Foundation's books and records, specifically devoted to the planned construction of a school on or near the existing campus, and creation of an intensive language acquisition program, meets the requirements of section 4942(g)(2)(B)(i) of the Code and section 53.4942(a)-3(b)(2) of the regulations. Accordingly, the set-aside may be treated as a qualifying distribution for the Foundation's

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taxable year ending December 31, 2003.

We direct the Foundation's attention to section 53.4942(a)-3(b)(8) of the regulations, entitled "Evidence of set-aside". This section provides that a set-aside approved by the Internal Revenue Service shall be evidenced by the entry of a dollar amount on the books and records of a private foundation as a pledge or obligation to be paid at a future date or dates. Further, any amount which is set aside shall be taken into account for purposes of determining the foundation's minimum investment return (see section 53.4942(a)-2(c)(1)), and any income attributable to such set-aside shall be taken into account in computing adjusted net income (see section 53.4942(a)-2(d)).

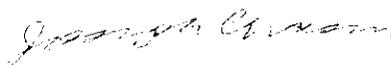
This ruling is based on the understanding that there will be no material changes in the facts upon which it is based. Any changes that may have a bearing upon the Foundation's tax status should be reported to the Tax Exempt and Government Entities (TE/GE) Customer Service Office, which deals with exempt organizations matters. The mailing address is: Internal Revenue Service, TE/GE Customer Service, P.O. Box 2508.

We are sending a copy of this ruling to the TE/GE Office. Because this letter could help resolve any questions about the Foundation's tax status, the Foundation should keep it with its permanent records.

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

Thank you for your cooperation.

Sincerely yours,



Joseph Chasin  
Acting Manager,  
Exempt Organizations  
Technical Group 4