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Contact Person:

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This is in response to your letter dated September 17, 2003, wherein you requested a ruling that a set-aside of funds be recognized as satisfying the suitability test of 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 Taxes Regulations.

You have been recognized as exempt under section 501(c)(3) of the Code and classified as a private operating foundation under section 4942(j)(3).

You are organized and operated for the purposes of preserving and improving the quality of life for residents and visitors of B and to promote the general welfare of B and the surrounding area.

In furtherance of your purposes, you have been acquiring and receiving by donation land in the town of C in B with the intention of developing a _____ and to benefit B residents and attract visitors to the region. You currently own approximately _____ acres of land in C including a portion of the site of the original D which comprises _____ of these acres.

You currently plan to construct a _____ complex on the land, anticipated to cost approximately \$_____ when complete. A conceptual design report has been prepared for the complex that includes an architectural design, a site and civil engineering study, a project cost summary, an operating performance analysis, and a regulatory review process. Prospective plans for the complex include the following buildings and structures: _____;

_____; _____; _____; related site utility, improvements, and landscaping.

Through _____, you have spent approximately \$_____ towards the planning and design of the complex. This amount has been applied towards your qualifying distributions for years ended October 31, _____, and _____. Currently, you are in the process of schematic design for the construction of the complex, including the _____. Many permits and approvals are required prior to and during the construction of the complex. A large number of these permits have already been obtained and several are in process at this time. Construction of the complex is expected to begin in _____ and is anticipated to be completed by _____.

In furtherance of your exempt purposes, as previously described, you are requesting approval of a set-aside of \$_____ for the fiscal year ending _____, for the purpose of constructing a _____, including infrastructure and planning related to it, on or near the original D site in C. The center will be part of the complex, all of which will be used to promote and assure the continuity of your exempt activities. The center will not be completed before _____, the end of the fiscal year in which you wish to make the set-aside.

You state that the project is better accomplished by a set-aside rather than by immediate payment of funds because current spending for the design and construction of the center is not possible. Such activities reasonably require a period of time that spans several years, as it is impossible to perform all of the work simultaneously, including design, permit and approved processes, construction and furnishing. Furthermore, as is customary and appropriate in the construction business, payments will be made on an "as work is done" basis, which promotes proper and timely completion of the facilities.

You have further stated that there are no planned additions to the set-aside; that funding for the project will come from current cash balance and investment income; and that the amount to be set-aside in the fiscal year ended _____, and all future set-asides will be used by you for the project within 60 months from the time the amount is set-aside.

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 (2) 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, for example, a plan to erect a building to house a direct charitable, educational, or similar exempt activity of the foundation.

Section 53.4942(b)-1(b) of the regulations provides, in part, that any amount set-aside by a foundation for a specific project, such as the acquisition, restoration, or construction of additional buildings or facilities which are to be used by the foundation directly for the active conduct of the foundation's exempt facilities, shall be deemed to be a qualifying distribution expended directly for the active conduct of the foundation's exempt facilities if such amount has initially been shown to meet the set-aside requirements in section 53.4942(a)-3(b) of the regulations.

You have stated that your proposed set-aside will accomplish a purpose described in section 170 of the Code, specifically, constructing a _____ as part of an overall project, to promote and assure the continuity of your exempt activities. The amount set-aside will be used to construct a facility in which to provide these activities. The facility will be completed by approximately _____, which is within the 60 months from the date of the set-aside. The set-aside should satisfy the suitability test because the expenditures were used for the design and construction of the center, and could not be made in the taxable year ending _____, as required under section 53.4942(a)-3(b)(2) of the regulations. Further, you have established to our satisfaction that the project is long-term in nature and is better accomplished by future expenditures than by current ones.

Based on the foregoing, we rule that the set-aside of _____ is specifically devoted to the construction of the above described facility, meets the requirements of section 4942(g)(B)(i) of the Code and section 53.4942(a)-3(b)(2) of the regulations. Accordingly, the set-aside can be

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treated as a qualifying distribution expended directly for the active conduct of exempt activities for your taxable year ending

We direct your attention to section 53.4942(a)-3(b)(4) 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.

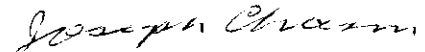
This ruling is conditioned on the understanding that there will be no material changes in the facts upon which it is based.

We are informing the TE/GE office of this action. Please keep a copy of this ruling in your organization's 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.

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

Sincerely,



Joseph Chasin
Acting Manager, Exempt
Organizations Technical Group 4