

Internal Revenue Service
Director, Exempt Organizations

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

Release Number: 201105051

Release Date: 2/4/11

Date: November 9, 2010

Employer Identification Number:

Person to Contact - ID#:

Contact Telephone Numbers:

Phone

Fax

UIL

4942.03.07

LEGEND

C = Organization
D = Facility Name
F = Organization
H = State
s = Dollar Amount
t = Dollar Amount
u = Dollar Amount
v = Dollar Amount

Dear

By letter dated December 28, 2009, you requested a determination that a set-aside in the amount of t for the tax year ended December 31, 2009, meets the requirements of Section 4942(g)(2)(B)(i) and accordingly constitutes a qualifying distribution under section 4942(g).

FACTS

You were created for the purpose of the advancement, support and maintenance of a camp for C in H. You have legal title to property known collectively as D and hold endowment funds of approximately s, the income from which has been used for the maintenance and repair of the property.

For many years, F has managed the operations of D and it has been the official camp site for C in H. Most of the activities of C in your area involve the use of this property.

Your trustees have approved a project to improve a road that you own and is used in the operations of D. This road serves as the only entrance to D. Your project consists of rebuilding approximately 1850 lineal feet of road, installing sewer lines, and extending a water line to your facility. You

will install gravel, adjust drainage along the road, repave, and landscape. The water service is especially needed for fire protection for the larger buildings. The sewer service will help insure the protection of the lake environment.

You have already completed the engineering work and obtained two estimates of the cost to complete the remainder of the project.

You have requested an approved set aside of t, which you estimate will be disbursed in the following years and amounts:

2010- u

2011- u

2012- v

Total- t

The entire project will be completed no later than December 31, 2012.

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 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 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 an example of a suitable project a plan to erect a building to house the exempt activity of the private foundation such as a museum.

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.

ANALYSIS

You have sought timely approval of your set-aside 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-aside will be used to accomplish purposes described in section 170(c)(2)(B) of the Code, namely, for the improvement of a road owned by you and utilized in the operation of D, the official camp of C in H.

You have credibly represented that the amount of the 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 a set-aside of income rather than by the immediate payment of funds because your project will take more than one year to complete and the project cost constitutes more than your annual distributable income. The cost of the project also constitutes a large portion of the assets so that prefunding the project would have a deleterious effect on your endowment. In addition, the set-aside will allow you to complete the project of improving the road and retain control over the funds so the funds are solely used to improve the road.

Reg. 53.4942(a)-3(b)(2) cites as an example of a suitable project a plan to erect a building to house direct charitable activities of the foundation. In a similar fashion, your set aside will be used to improve a road owned by you and used by C. Therefore, you are like the foundation in Section 53.4942(a)-3(b)(2) of the regulations which sets aside funds to build a museum.

Your project is one in which relatively long-term grants or expenditures must be made and requires expenditures greater than your normal distributable amount. In construction projects of this kind, it is customary and necessary to pay contractors when services are performed. For these reasons the project is better accomplished by a set aside than through current distribution of funds

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-aside of t for the taxable year ending _____, meets the requirements of Section 4942(g)(2)(B)(i) and accordingly constitutes a qualifying distribution 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.

We have sent a copy of this letter to your representative as indicated in your power of attorney.

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