

**Internal Revenue Service  
Director, Exempt Organizations**

**Department of the Treasury  
P.O. Box 2508  
Cincinnati, Ohio 45201**

Number: **201146019**  
Release Date: 11/18/2011

Date: April 11, 2011

Contact Person:

Identification Number:

Contact Numbers:

Phone

Fax

Employer Identification Number:

**LEGEND**

B= State  
C= Name  
D= Name  
t= Dollar amount  
u= Dollar Amount  
v= Dollar Amount  
w= Dollar Amount

**UIL LIST:  
4942.03-07**

Dear \_\_\_\_\_ :

By letter dated December 9, 2010, you requested a determination that a set-aside in the amount of \$t for the taxable year ending December 31, 2010, meets the requirements of Section 4942(g)(2)(B)(i) and accordingly constitutes a qualifying distribution 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 wish to set aside \$t for the purpose of funding a project of D, a publicly supported organization exempt under Section 501(c)(3) of the Internal Revenue Code. D operates C, which is a camp in B and provides camp recreational programs for disabled children and adults. You have previously made qualifying distributions in the amount of \$w to D to construct a dormitory for C. D's current project is an expansion of C's dining hall, at an estimated cost of \$u. D has not set a specific starting date for the project, but has obtained estimates for the construction as well as engineered drawings of the planned renovation and improvements.

In addition to the set-aside, you intend to make significant distributions to D after construction has begun to ensure that the project is eventually completed. The cost of the project is significant in

relation to your total assets and income, your annual distributions being typically in the range of \$v. D will not initiate construction until it has been able to raise 75 percent of the estimated cost of the project's first phase. The set-aside of \$t is equal to approximately 30 percent of the first phase cost. For the project even to begin, therefore, D must first raise funds equal to 45 percent of the estimated cost of Phase 1. These must come from increased general contributions, as D has recently conducted two capital campaigns and considers it prudent to let some time pass before it undertakes another. Hence, D anticipates that the funding threshold will not be met before late 2012 or early 2013. If, as expected, D is able to attain the funding target within this period, it anticipates that the project will be completed by December 31, 20 .

## **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) of the Foundation and Similar Excise Tax Regulations 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) 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, or where grants are made as part of a matching grant program.

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 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 for a specific project for one or more of the purposes in section 170(c)(2)(B) of the Code. As in Revenue Ruling 77-7, the "specific project" is a building project to be undertaken by a public charity unrelated to you. The building project is in furtherance of educational purposes within the meaning of in section 170(c)(2)(B).

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.

The project can better be accomplished by a set-aside of income than by the immediate payment of funds. The project cannot move forward until D has secured most of the funding required. Your pledge of \$t will ensure that the project's threshold funding is achieved. Furthermore, the set-aside will leave you in a better position to make additional qualifying contributions to D during the construction phase to ensure completion of the project.

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 December 31, 2010, meets the requirements of Section 4942(g)(2)(B)(i) and accordingly constitutes a 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,

Lois Lerner  
Director, Exempt Organizations

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