

**Internal Revenue Service
Director, Exempt Organizations**

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

Number: **201210040**
Release Date: 3/9/2012

Date: December 13, 2011

Contact Person:

Identification Number:

Contact Number:

Employer Identification Number:

LEGEND

B = state
C = city
D = city department
E = organization
t = dollar amount
u = dollar amount
v = dollar amount

UIL LIST:
4942.03-07

Dear _____ :

You requested a determination that a set-aside in the amount of **t** dollars for the taxable year ending December 31, 2011, 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 have set aside **t** dollars for a childhood lead-poisoning initiative in the city of **C** ("Project"). You will disburse the set-aside funds to two entities, **D**, a government agency, and **E**, a publicly supported charity.

D operates a well-established lead hazard control program, which corrects lead hazards in residential units. **D** selects the properties for lead hazard abatement and monitors and pays the contractors engaged to carry out the work. You will provide funding to **D** sufficient to fund lead hazard removal for approximately 57 housing units, approximately **u** dollars. The neighborhoods that will be targeted for the Project are considered high-risk areas for lead poisoning. Most of the properties the Project renders safe will be tenant housing. Eligible property must be in the targeted neighborhoods. Owner-occupants must have income at or below 80 percent of Area Median Income, tenant-occupants at or below 50 percent of Area Median Income. Owners of rental properties must agree to make rents affordable to very low income occupants for at least three years. The process initiated by the filing of

an application by a property owner and culminating in the completion of the work is a protracted one. It may take up to six months for an eligible property to satisfy all the procedural requirements, and then there may additional delays in scheduling an EPA-certified contractor.

The contractor will invoice D for the lead removal services it performs. You will then disburse set-aside funds to D in the precise amount it needs to pay the contractor. The disbursement of set-aside funds to D only for expenses as they are actually incurred is for the purpose of increasing the accountability of both D and the contractor for the use of the funds.

You will disburse approximately y dollars to E to perform lead hazard education, outreach and application assistance to families in the targeted neighborhoods throughout the term of the Project. You believe that disbursing funds to E on a periodic (quarterly) basis will make for greater accountability, ensuring that E uses the funds you furnish exclusively to carry out its role in the Project.

The set aside will be entirely disbursed for the Project within a three year period.

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.

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. You will provide funding to D, an agency of the city of C, that will allow it to pursue abatement of lead posing an acute poisoning threat to small children in housing occupied by low and very low income families. The project is in furtherance of charitable 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. You have concluded that in order to be certain that the funds you provide will be used for the intended purpose, it will be necessary to disburse funds to the city on a project-by-project pay-as-you-go basis. Because of the time needed to identify eligible properties, prepare and process applications, and schedule contractors, the task of cleaning up 57 separate sites is expected to stretch out over several years.

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 dollars for the taxable year ending December 31, 2011, 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.

A copy of this letter has been sent to your authorized representative.

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

Enclosure:
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