

Internal Revenue Service
P.O. Box 2508
Cincinnati, OH 45201

Department of the Treasury

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Release Date: 2/15/2013
Date: **November 20, 2012**

Employer Identification Number:

Contact Person - ID Number:

Contact Telephone Number:

LEGEND

t =
W =
X =
Y =

UIL LIST:
4942.03-07

Dear

Why you are receiving this letter

This is our response to your February 20, 2012, letter requesting approval of a set-aside under Internal Revenue Code section 4942(g)(2). You've been recognized as tax-exempt under section 501(c)(3) of the Code and have been determined to be a private foundation under section 509(a).

Our determination

Based on the information furnished, your set-aside program is approved under Internal Revenue Code section 4942(g)(2). As required under section 4942(g)(2), the set aside amount must be paid within the 60-month period after the date of the first set-aside.

Description of set-aside request

You have requested approval of a set-aside of t dollars for the taxable year ending December 20 , for the purpose of funding in part the expansion of W and the renovation of X, both located on the campus of Y. The expansion of W will add 63,000 square feet, including spectator entrances, retail spaces, ticketing areas and private club venues. Renovations of approximately 54,000 square feet will accommodate accessible seats, improve circulation and egress, and increase the number of restrooms and concession areas. The renovations at X will add approximately 7,000 square feet, primarily involving a new entrance area. Renovation of an additional 7,000 square feet will primarily affect the museum,

recruiting lounge and entrance areas.

The Projects are better accomplished by a set-aside than by the immediate payment of such funds because current spending for the construction is not practicable. With respect to the W expansion only a small percentage of the construction has been completed to date; it is expected to continue through 2013, with the sign-off by Y not expected until March 2014. The X project is in the planning stages. While a tentative budget has been prepared design work and architectural plans have yet to be finalized. Construction will not begin until 2013 and is not expected to be completed until sometime late in 2014.

As is customary and appropriate in construction projects, payments by Y will only be made upon the completion and approval of construction targets. Given that work involving each building is scheduled to occur over the next 24-30 months, payments will clearly extend beyond the close of the current year. Consistent with this anticipated schedule of construction financing, your grant agreement with the regents of Y requires that prior to disbursing your pledged funding, you must receive written certification from Y that modifications to W and X have been completed, including all approvals, authorizations, consents and permits from all applicable governmental authorities and that the improved areas of the facilities have been opened to the public for their intended purposes.

One of your foundation managers has provided a written statement that the t dollars set aside will actually be paid for the Projects within 60 months after the date of the set-aside.

Basis for our determination

Internal Revenue Code section 4942(g)(2)(A) states that an amount set aside for a specific project, which includes one or more purposes described in section 170(c)(2)(B), may be treated as a qualifying distribution if it meets the requirements of section 4942(g)(2)(B).

Section 4942(g)(2)(B) of the Code states that an amount set aside for a specific project will meet the requirements of this subparagraph if, at the time of the set-aside, the foundation establishes that the amount will be paid within five years and either clause (i) or (ii) are satisfied.

Section 4942(g)(2)(B)(i) of the Code is satisfied if, at the time of the set-aside, the private foundation establishes that the project can better be accomplished using the set-aside than by making an immediate payment.

Section 53.4942(a)-3(b)(1) of the Foundations and Similar Excise Taxes Regulations provides that a private foundation may establish a project as better accomplished by a set-aside than by immediate payment if the set-aside satisfies the suitability test described in section 53.4942(a)-3(b)(2).

Section 53.4942(a)-3(b)(2) of the Foundations and Similar Excise Taxes Regulations provides that specific projects better accomplished using a set-aside include, but are not limited to, projects where relatively long-term expenditures must be made requiring more than one year's income to assure their continuity.

In Revenue Ruling 77-7, 1977-1 C.B. 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.

What you must do

Your approved set-aside(s) will be documented on your records as pledges or obligations to be paid by the date specified. The amounts set aside will be taken into account to determine your minimum investment return under Internal Revenue Code section 4942(e)(1)(A), and the income attributable to your set aside(s) will also be taken into account in computing your adjusted net income under section 4942(f) of the Code.

Additional information

This determination is directed only to the organization that requested it. Internal Revenue Code section 6110(k)(3) provides that it may not be used or cited as a precedent.

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

If you have any questions, please contact the person listed in the heading of this letter.

Sincerely,

Holly O Paz
Director, Exempt Organizations
Rulings and Agreements

Enclosure