

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

**Department of the Treasury**

Number: **201823010**  
Release Date: 6/8/2018

**Employer Identification Number:**

**Contact Person - ID Number:**

**Contact Telephone Number:**

**Date: March 14, 2018**

**LEGEND**

UIL:  
4942.03-07

B = State  
C = Town  
D = State  
E = Name of Organization  
F = Name of theatre  
n dollars = Amount of matching grant  
p dollars = total cost of project  
q dollars = Total matching contributions  
s = Date 1  
t = Date 2  
u = Date 3  
v = Date 4  
w = Date 5  
x = Date of set-aside

Dear :

**Why you are receiving this letter**

This is our response to your December 9, 2016, 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 were incorporated in the state of B. You wish to set aside a grant of n dollars to E to assist in funding the restoration of F. E, a Section 501(c)(3) public charity organized under the law of the state of D, owns and operates F. F is a unique historic theatre listed on the National Register of Historic Places. The estimated total cost of the restoration project is p dollars.

By the terms of your agreement with E, you will make a matching grant of n dollars to E to fund approximately one-third of the estimated cost of the project. It is estimated that the remaining two-thirds of the estimated costs of the project will be funded by donations and grants raised by E in response to your matching grant challenge.

If E raises the matching funds and satisfies certain conditions of the agreement, you will disburse the funds in a lump sum within 21 business days. E will deposit the funds in a separate interest-bearing account (the "Project Account"). E may make disbursements from the Project Account to pay costs of the project, not to exceed one-third of the total "reimbursement costs" incurred exclusively for the project and no other purpose. Reimbursement costs are costs actually incurred by E for labor, materials, fees and permits for the project, including the labor, materials and other items described in the proposal.

Specific conditions to the grant are as follows:

(a) On or before date s (the "Challenge Deadline"), E shall (i) have received eligible matching contributions for the project in an amount not less than q dollars, and (ii) shall have provided you with evidence satisfactory to you in your sole discretion that such eligible matching contributions have been received;

(b) On or before date t, you shall have received assurances satisfactory to you that E has engaged an architectural or contracting firm approved by you as the supervising architect or construction manager for the Project;

(c) On or before date u, E shall have submitted to you and you shall have in writing, the drawings, plans and specifications for the Project;

(d) On or before date v, you shall be satisfied, in your sole discretion, that E has sufficient funding to complete the Project as embodied in the Plans;

(e) Prior to disbursement of any portion of the grant from the project account for the purchase of any materials or the performance of any work on the Project, E shall have received written approval from you on the contractor, vendor or other supplier and all final awarded contracts exceeding 5% of the total Project costs for labor and/or materials; and

(f) E shall be an organization currently described in Section 501(c)(3) and 509(a)(1) or (2) of the Internal Revenue Code when the Grant is initially paid to E and at the time of disbursement of any portion of the grant from the project account.

You have established that your project satisfies the suitability test described in Section 53.4942(a)-3(b)(2) of the Foundations and Similar Excise Taxes

Regulations. Specifically, your project can be better accomplished by use of a set-aside because the grant is part of a grant matching program. Furthermore, you have represented that the grant will be disbursed not later than date w, 21 days after the latest possible date for satisfaction of the specified conditions, and less than 60 months from the date of the set-aside, x.

### **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, or where grants are made as part of a matching grant program.

Revenue Ruling 77-7, 1977-1 C.B. 354, describes a private foundation which set aside income for eventual distribution to an unrelated public charity for construction of a specific building project. The Internal Revenue Service held that the building project was a "specific project" within the meaning of the applicable Code and Regulations Sections.

### **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,

Stephen A. Martin  
Director, Exempt Organizations  
Rulings and Agreements

Enclosure