

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

**Department of the Treasury**

**Number: 201833027  
Release Date: 8/17/2018**

**Employer Identification Number:**

**Contact Person - ID Number:**

**Contact Telephone Number:**

**Date: May 21, 2018**

**LEGEND**

**UIL: 4942.03-07**

D = County

E = State

F = City

G = Church

H = Year

J = Year

k dollars = Amount

l dollars = Amount

m dollars = Amount

n dollars = Amount

Dear :

**Why you are receiving this letter**

This is our response to your November 7, 2017 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're dedicated to enhancing education for students in grades Pre-K through 12 and advancing theatre and performing arts to positively impact residents of D County in the state of E. You accomplish these objectives through funding various arts initiatives.

You wish to set aside funds totaling n dollars for a specific project to construct an arts campus facility in the city of F. The centerpiece of the development project is the rehabilitation and reuse of a vacant and historic church building, known as G. G is a highly-visible structure and is listed on the National Register of Historic Places.

One of the project's goals is to provide a host of in-demand services to small nonprofit arts groups. Included in the overall cost of the project, between k and l dollars, are m dollars in specific infrastructure and finishes (tenant improvements) to serve performing arts tenants and users. The facility is a social enterprise offering collaborative visual and performing arts space, a contemporary gallery, and a resource center for arts-related organizations, individuals and groups. The vision is to create a vibrant artistic campus that unifies neighborhoods and the city of F.

The purpose of the set-aside is to fund a portion of these infrastructures and finishes costs. You are requesting a ruling regarding a proposed set-aside of funds in the amount of n dollars for the taxable year ending in H. The amount of n dollars is your entire commitment and there are no planned additions. The construction of the arts-related infrastructure/tenant improvements of the facility are better accomplished by a set-aside of n dollars rather than the immediate payment of such funds because current spending of these construction costs is not possible at this time. However, this commitment is necessary to allow the project to move forward with securing commitments from financiers and to enable the establishment firmer commitments with prospective nonprofit performing arts tenants and users. The final design and construction of the arts campus facility has yet to commence.

The City of F Planning Board formerly approved the plans. Many of the construction and tenant improvement build-outs, are ongoing and require more time. It is now confirmed that construction will begin in calendar year J and will be completed in the two years following. Moreover, as is customary and appropriate in the construction of a facility, payments will be made by you on an "as work is done" basis, which will promote the proper and timely completion of the arts campus facility. It is anticipated that relevant expenditures for the construction of the facility (tenant improvements and finishes) will not begin to be made until calendar year J.

The set-aside of n dollars will be paid within five years after the first 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 74-450, 1974-2 C.B. 388, an operating foundation converted a portion of newly acquired land into a public park under a four-year construction contract. The construction contract payments were to be made mainly during the final two years. This constituted a "specific project." The foundation's set-aside of all its excess earnings for four years was treated as a qualifying distribution under Internal Revenue Code Section 4942(g)(2).

### **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