

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

Department of the Treasury

Number: **201835013**
Release Date: 8/31/2018

Employer Identification Number:

Contact Person - ID Number:

Contact Telephone Number:

Date: June 4, 2018

LEGEND

B = Year

C = Year

D = Year

E = Year

w dollars = Amount

x dollars = Amount

y dollars = Amount

z dollars = Amount

UIL:

4942.03-07

Dear :

Why you are receiving this letter

This is our response to your December 29, 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 operate a botanical garden complex consisting of gardens, water features, woodlands, grasslands, and floricultural displays. You seek to construct a visitors' center which will include a multipurpose meeting/reception area, greenhouse, plant/gift shop, café, exhibit gallery, and staff offices. You also plan to create new gardens, improve existing gardens surrounding the facility, and build a larger parking lot to improve storm water management. You estimate this project to cost w dollars and expect it to be completed by the spring of E.

As a result of the above plans, you identified the need to increase your gardening staff and renovate your horticultural maintenance service buildings and service area as well as construct an addition onto those facilities. You estimate this project to cost x dollars and expect it to be completed in late C.

You requested approval of a set-aside of y dollars for the taxable year ending B. You will apply z dollars toward the visitors' center and associated improvements, and x dollars will be used to complete the renovations and addition to your horticultural service buildings and service area.

The project can be better accomplished by a set-aside not only because pre-payment of long-term constructions projects is either not possible or impractical, but also because the terms of your organizing document limit the amount of trust principal that can be used to fund operations or projects.

You attested the entire y dollars will be applied within the 60-month period after the date of the first set-aside but anticipate applying the entire y dollars by the end of E.

You may seek additional set-asides in approximate amounts of y dollars per year in C and D, respectively, to be used to complete the visitors' center and associated improvements.

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.

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