

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

Department of the Treasury

Number: **201835014**
Release Date: 8/31/2018

Person to Contact / ID Number:

Contact Telephone Numbers:

Date: June 5, 2018

Employer Identification Number:

LEGEND

UIL: 4942.03-07

L = Date of formation
M = Testator
N = Primary beneficiary
O = Date of decision to replace primary beneficiary
P = Date of lawsuit
Q = Court
r dollars = Amount of each set-aside
S = First set-aside year
T = Second set-aside year
V = Date of settlement

Dear

This is in response to your request dated January 10, 2017 for advance approval of certain set asides described in Internal Revenue Code Section 4942(g).

Based on information submitted, we've determined that you don't meet the requirements for approval of your request. The basis for our conclusion is set forth in Enclosure 1.

We'll make our proposed adverse determination letter available for public inspection under Internal Revenue Code Section 6110 after deleting certain identifying information. Please read the enclosed Notice 437, *Notice of Intention to Disclose*, and review the two attached letters that show our proposed deletions.

If you disagree with our proposed deletions, you should follow the instructions in Notice 437. If you agree with our deletions, you don't need to take any further action.

For important information about your responsibilities as a tax-exempt organization, go to www.irs.gov/charities. Enter "4221-PF" in the search bar to view Publication 4221-PF, *Compliance Guide for 501(c)(3) Private Foundations*, which describes your recordkeeping, reporting, and disclosure requirements.

You should keep a copy of this letter in your permanent records.

If you have any questions, please contact the person whose name and telephone are shown in the heading of this letter.

Sincerely,

Stephen A. Martin
Director, Exempt Organizations
Rulings and Agreements

Enclosures:
Enclosure 1
Notice 437

Enclosure 1

Issues

Do you qualify for advance approval of certain set asides described in Internal Revenue Code Section 4942(g)? No, for the reasons stated below.

Facts

You were established in L upon the death of M. M's will named a primary beneficiary organization N, which was to receive distributions from you, for the sole purpose of enabling N to perform a specific charitable activity.

In O, you concluded that N no longer performed the activity for which the will granted distributions to it. You sought to replace N. In P, N sued you in the Q to require you to continue making distributions to N.

You requested the IRS approve set-asides of r dollars for the fiscal years ending S and T under section 4942(g) of the Code. Your request, and subsequent submissions, cited the litigation in the Q as the reason for its request. In response to our request for copies of court orders preventing you from distributing your assets, you stated that there was no court order, but in view of the litigation you had desisted from the attempt to make distributions on the advice of your counsel. On V, after you and N had adopted a mutually acceptable expenditure responsibility agreement, your counsel and N's stipulated that the action and all claims and causes of action were settled and compromised and the action was dismissed with prejudice.

Law

Treas. Reg. Section 53.4942(a)-3(b)(9) provides that in the event a private foundation is involved in litigation and may not distribute assets or income because of a court order, the private foundation may seek and obtain a set-aside for a purpose described in Section 53.4942(a)-3(a)(2).

Application of law

You have not provided supporting documentation showing there is any court order prohibiting the distribution of assets or income, as required for approval of a contingent set-aside described in Treas. Reg. Section 53.4942(a)-3(b)(9). Accordingly, based on the information submitted, your request for approval of the set-asides you have described must be denied.