

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

Department of the Treasury

Number: 202009030
Release Date: 2/28/2020

Employer Identification Number:

Date: December 4, 2019

Contact Person - ID Number:

Contact Telephone Number:

Legend:
x dollars = Amount
M = Name
N = Name
y dollars = Amount
B = Date
C = Date
D = Date
E = Date

UIL:
4942.03-07

Dear _____ :

Why you are receiving this letter

This is our response to your March 26, 2019 letter requesting approval of a set-aside under Internal Revenue Code IRC Section 4942(g)(2). You've been recognized as tax-exempt under IRC Section 501(c)(3) and have been determined to be a private foundation under IRC Section 509(a).

Our determination

Based on the information furnished, your set-aside program is approved under IRC Section 4942(g)(2). As required under IRC 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 requested approval of a set-aside of x dollars for the taxable year ending December 31, _____, for the purpose of funding the rehabilitation and repair of a building M, a public university, plans to use. You will distribute the funds to N, which raises funds in support of M.

The building is currently uninhabitable and in urgent need of rehabilitation and repair. The project will include interior, exterior, structural, plumbing, electrical, and abatement work consistent with historic preservation standards. The total cost of

the project is estimated to be approximately y dollars. The goal is to make the building a habitable structure that can be used and enjoyed by students and faculty of M and the community while maintaining and preserving its historic significance.

Your grant is the subject of a grant agreement between you, M, and N. Under the terms of the agreement, you will make a grant of x dollars to N to fund approximately one-third of the estimated cost of the project if certain conditions are satisfied. Those conditions include:

- On or before B, N must receive matching contributions to fund approximately two-thirds of the project cost and submit evidence of same to you;
- On or before C, N must submit to you the drawings, plans, and specifications for the project and give you a reasonable amount of time to review and comment on the plans;
- On or before D, N must provide you with satisfactory assurances that it has sufficient funds to complete the project;
- N must agree to use the funds solely for direct costs incurred by M to procure labor, materials, fees, permits, and other similar items for the project.

If N satisfies the terms of the agreement, you will distribute the funds to it within 21 business days.

The project can be better accomplished by use of a set-aside because the grant requires the use of a matching-grant program and the preservation of control over the quality of the project. Regarding the matching-grant program, you believe that, due to the extent and cost of the rehabilitation and restoration needed for the building, grants from the community must form an essential and significant part of the project funding. Through the matching-grant program, you hope to encourage other donors to support the project. The approximate three-year period provided in the project agreement to raise the necessary matching funds has been mutually agreed by the you and N as allowing sufficient time for N to complete its anticipated capital campaign for the project.

In terms of quality control, it is important that you retain a degree of control over the renovation process because you wish to preserve the historical features of the building. By making the disbursement of the funds dependent upon approval of outside consultants and contractors and of drawings, plans, and specifications of the project, you believe you can best meet the goal of restoring the building and assure that the final restoration project is consistent in scope and concept with the project N originally submitted to you.

Payment must be made not later than E, which is fewer than 60 months from the date of the set-aside.

Basis for our determination

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

IRC Section 4942(g)(2)(B) 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.

IRC Section 4942(g)(2)(B)(i) 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.

Treasury Regulation Section 53.4942(a)-3(b)(1) 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 Treas. Reg. Section 53.4942(a)-3(b)(2).

Treas. Reg. Section 53.4942(a)-3(b)(2) 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 IRC 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 IRC 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 IRC Section 4942(f).

Additional information

This determination is directed only to the organization that requested it. IRC 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