

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

Department of the Treasury

Number: **202126030**
Release Date: 7/2/2021

Employer Identification Number:

Date: April 5, 2021

Contact Person - ID Number:

Contact Telephone Number:

LEGEND:

UIL: 4942.03-07

B = Date
C = Location
x dollars = Amount
y = Number

Dear _____ :

Why you are receiving this letter

This is our response to your **June 30, 2020** 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 have requested a set-aside of x dollars for the tax year ending B. Your mission is to support the education and the general betterment of the quality of life for minority and underprivileged children.

The purpose of the set aside is to provide funding for the construction of a school building in order to further your mission by providing a physical location in which high-quality early education programs can operate and support families primarily in the city of C. The school building will have more than y thousand square feet of space, including numerous oversized classrooms, a welcome center, a sensory gym, an outdoor playground and administrative offices. Final plans have already been approved by C.

The set amount will be used primarily to pay the primary contractor and

construction expenses, but also will be used to pay for construction services and consulting services, surveys and studies including environmental, soil, and traffic, accounting and legal expenses, insurance, furniture and other needed miscellaneous services and supplies.

The construction of the educational building can be better accomplished by a set-aside rather than by an immediate payment of funds because the construction of the school building will span multiple years. In addition, for these types of construction projects, it is generally not customary and feasible to make all payments required within a single year. It would also not be prudent to pay the construction contractors the total amount prior to the completion of the entire job.

The set-aside approach will allow you to maximize control over the project, with the goal of achieving a better result. Additionally, the set aside amount is a very large sum in relation to your historical assets and income.

You provided a statement indicating that the set-aside will actually be paid within a specified time period not to exceed 60 months from the date of the first 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