

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

**Department of the Treasury**

**Date:** 09/12/2022

**Employer Identification Number:**

**Contact person - ID number:**

**Contact telephone number:**

**Release Number:** 202249022

**Release Date:** 12/9/2022

**LEGEND:**

B = County, State

C = Organization 1

D = Date

E = Date

F = Organization 2

G = Organization 3

h dollars = Amount

**UIL:**

4942.03-07

Dear :

**Why you are receiving this letter**

We received your January 3, 2022 request for approval of a contingent set-aside under Treasury Regulation Section 53.4942(a)-3(b)(9) of the Foundation and Similar Excise Taxes for the tax year ended December 31, 2021.

You are recognized as tax-exempt under Internal Revenue Code (IRC) Section 501(c)(3) and as a private foundation under Section 509(a).

**Facts**

Based upon the information furnished, your contingent set-aside is approved under Treas. Reg. Section 53.4942(a)-3(b)(9) of the Foundation and Similar Excise Taxes. As required under Treas. Reg. Section 53.4942(a)-3(b)(9), the contingent set-aside amount must be distributed by the last day of the taxable year following the taxable year in which the litigation is terminated. Amounts not distributed by the close of the appropriate taxable year shall be treated as described in Treas. Reg. Section 53.4942(a)-2(d)(2)(iii)(c) for the succeeding taxable year.

**Description of set-aside request**

On E, C filed a Motion for Temporary Restraining Order and Injunction against F in the Court for B. On D, the court ordered that F shall hold any distributions from you to which C may now be, or in the future will be, entitled to pursuant your terms until the court enters an order directing F to either disburse such funds to C or to disburse such funds as the court may otherwise direct. The court also ordered that F shall invest the funds held pursuant to the court's order in the

same manner as the remainder of your corpus is being invested and that F shall keep a separate accounting for any distributions that may be due to C, pursuant to your terms. The court additionally ordered that F may continue to make disbursements to the other beneficiary, G, in the ordinary course; however, such distributions shall not include any amounts to which C is or will be entitled to should the court ultimately rule in its favor. The court further ordered that all other matters are reserved.

You stated that the set-aside amount for tax year \_\_\_\_\_ is \$ \_\_\_\_\_ dollars.

#### **Law**

IRC Section 4942(a) generally imposes an excise tax on the undistributed income of a private foundation for any taxable year which has not been distributed before the first day of the second (or any succeeding) taxable year following such taxable year. For purposes of Section 4942, the term “distributed” means distributed as qualifying distributions under Section 4942(g).

IRC Section 4942(c) defines “undistributed income” as the amount by which the distributable amount for such taxable year, exceeds the qualifying distributions made before such time out of such distributable amount.

IRC Section 4942(d) defines the computation of the “distributable amount” for a taxable year as the sum of the minimum investment return plus the amounts described in subsection (f)(2)(C), reduced by the sum of the taxes imposed on such private foundation for the taxable year under subtitle A and Section 4940.

IRC Section 4942(g)(1) defines “qualifying distribution” as any amount (including that portion of reasonable and necessary administrative expenses) paid to accomplish one or more purposes described in Section 170(c)(2)(B), other than any contribution to (i) an organization controlled (directly or indirectly) by the foundation or one or more disqualified persons (as defined in Section 4946) with respect to the foundation, except as provided in paragraph (3), or (ii) a private foundation which is not an operating foundation (as defined in subsection (j)(3)), except as provided in paragraph (3), or any amount paid to acquire an asset used (or held for use) directly in carrying out one or more purposes described in Section 170(c)(2)(B).

Treas. Reg. Section 53.4942(a)-2(d)(2)(iii)(c) of the Foundation and Similar Excise Taxes includes in gross income for the taxable year any amount set aside under Section 53.4942(a)-3(b) to the extent it is determined that such amount is not necessary for the purposes for which it was set aside.

Treas. Reg. Section 53.4942(a)-3(a)(2)(iii) defines as a qualifying distribution, in relevant part, to mean, any amount set aside within the meaning of paragraph (b) of section 3.

Treas. Reg. Section 53.4942(a)-3(b)(9) provides that if 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 the purpose described in Section 53.4942(a)-3(a)(2). The amount to be set aside shall be equal to that portion of the private foundation's distributable

amount which is attributable to the assets or income that are held pursuant to court order and which, but for the court order precluding the distribution of such assets or income, would have been distributed. In the event that the litigation encompasses more than one taxable year, the private foundation may seek additional contingent set-asides. Such amounts must actually be distributed by the last day of the taxable year following the taxable year in which the litigation is terminated. Amounts not distributed by the close of the appropriate taxable year shall be treated as described in Treas. Reg. Section 53.4942(a)-2(d)(2)(iii)(c) for the succeeding taxable year.

#### **Application of Law**

While litigation is pending, a court order prevented you from making the distributions which are the subject of the set-aside. These are the circumstances described in Treas. Reg. Section 53.4942(a)-3(b)(9).

Accordingly, we rule that \$ \_\_\_\_\_ dollars, the amount which would have been distributed before \_\_\_\_\_, but for the court's order precluding such distribution, qualifies as a contingent set-aside described in Treas. Reg. Section 53.4942(a)-3(b)(9) for taxable year ended \_\_\_\_\_.

This ruling is based on the facts as they were presented and on the understanding there will be no material changes in the facts upon which it is based. Any changes that may have a bearing on your tax status should be reported to the Internal Revenue Service. This ruling does not address the applicability of any section of IRC Code or Treas. Reg. to the facts submitted other than with respect to the sections described.

We direct your attention to Treas. Reg. Section 53.4942(a)-3(b)(8), entitled "Evidence of set-aside." This section provides that any set-aside approved by the Internal Revenue Service shall be evidenced by the entry of a dollar amount on the books and records of a private foundation as a pledge or obligation to be paid at a future date or dates. Further, the amount of the set-aside must be taken into account in determining the foundation's minimum investment return (see Treas. Reg. Section 53.4942(a)-2(c)(1)), and any income attributable to a set-aside must be taken into account in computing adjusted net income (see Treas. Reg. Section 53.4942(a)-2(d)).

#### **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 precedent.

We'll make this determination letter available for public inspection after deleting personally identifiable information, as required by IRC Section 6110. Enclosed are Letter 437, Notice of Intention to Disclose – Rulings, and a copy of the letter that shows our proposed deletions.

- If you disagree with our proposed deletions, follow the instructions in the Letter 437 on how to notify us.
- If you agree with our deletions, you don't need to take any further action.

Please keep a copy of this letter in your permanent records.

If you have any questions, you can call the contact the person shown above.

Sincerely,

Stephen A. Martin  
Director, Exempt Organizations  
Rulings and Agreements

Enclosures:  
Redacted determination letter  
Letter 437