



Department of the Treasury  
Internal Revenue Service  
Tax Exempt and Government Entities  
P.O. Box 2508  
Cincinnati, OH 45201

Date: 06/20/2023

Employer ID number:

Person to contact:

Name:

ID number:

Telephone:

Fax:

Release Number: 202337011

Release Date: 9/15/2023

UIL: 4942.03-07

## LEGEND

R = Year

S = Location

T = Number

U = Location

z dollars = Amount

Dear :

### Why you are receiving this letter

We received your June 20, 2022 request for approval of a set-aside under Internal Revenue Code (IRC) Section 4942(g)(2). Based on the information furnished, your request is approved.

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

### What you need to do

Document your approved set-aside(s) in your records as pledges or obligations. You must pay the set-aside amounts within 60 months after the date of the first set-aside, as required under IRC Section 4942(g)(2).

Take into account the amounts set aside when determining your minimum investment return under IRC Section 4942(e)(1)(A) and the income attributable to your set-asides when computing your adjusted net income under IRC Section 4942(f).

### Description of set-aside request

You were founded in R to address the significant lack of high-quality facilities for the S area cultural community. Since your inception, you have conducted strategically significant research, design, planning, and community outreach for the intended performing arts venues. You have requested a set-aside for z dollars for the purpose of permitting, designing, construction, and commissioning the T. The goal of T is to make a material contribution to the cultural productivity, diversity, and richness not only of the U area, but also of the entire S region. T will comprise international-caliber performance venues that will host performances of music of all kinds, live theatre, dance, opera, and cinema, as well as provide a full range of community, family, educational, civic, and business events. You also envision multiple courtyards and extensive landscaping as part of T.

T will be the only major performance space in the region organized for, and managed in conjunction with, independent art organizations that do not currently have a home space and will provide for the needs of arts organizations in areas such as booking of dates, marketing assistance, access to technical equipment, and competitive rental rates.

You explained that T's first objective is to provide much-needed home for the numerous cultural arts organizations currently lacking a space of their own. T's second objective is to take on a comprehensive and systematic exploration of performance spaces all over the world to create an institution that inspires the transformative and magical moment when the performer interacts and intersects with the audience member. The center will be financially sufficient once fully built, requiring no further philanthropic donations to operate (the only donations necessary are those to build it). The center will also bring significant new funds to arts groups using the facility -- thereby lowering their need for unearned income (donations) and enhancing their earned income (ticket sales) -and to survive and grow.

Your Board of Directors will oversee the project. In addition, you have created an Advisory Board consisting of philanthropic and community leaders to assist in carrying out the project. You have also identified two general contractors, both of which are well qualified to lead the construction work. Both have expressed strong interest in providing those services. Moreover, you are actively engaged in locating and evaluating potential sites. Once a prospective site is located, a complex permitting process follows. After successful permitting, a detailed architectural and engineering design process follows, which will lead to the bid packages. Once construction commences, costs rapidly escalate, not only consuming set-aside funds but most of your assets. The construction phase will likely be near the end of the set-aside period. Since you will need all your current assets and any projected income and gifts for the significant design and construction costs in the coming years, you believe that your mission can best be accomplished by the set-aside approach. You provided a statement that the amount to be set aside will actually be paid within a specified period of time that ends not more than 60 months after the date of the first 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 (Treas. Reg.) 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).

**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.

Visit [www.irs.gov/setasides](http://www.irs.gov/setasides) for more information.

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.

Keep a copy of this letter for your records.

We have sent a copy of this letter to your representative as indicated in Form 2848, Power of Attorney and Declaration of Representative.

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

Sincerely,

Stephen A Martin  
Director, Exempt Organizations  
Rulings and Agreements

**Enclosures:**

Redacted Letter 4797

Letter 437

