



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

Date:
08/07/2023
Employer ID number:

Person to contact:
Name:
ID number:
Telephone:
Fax:

Release Number: 202344022
Release Date: 11/3/2023

UIL: 4942-03-07

LEGEND

C = Date
D = Date
E = Date
F = Date
G = Date
J = Date
L = Date
M = Date
N = Date
O = Year
P = Number
Q = Number
R = Number
u dollars = Amount
v dollars = Amount
w dollars = Amount

Dear :

Why you are receiving this letter

We received your 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 are requesting a set-aside for your project for tax year ending D for v with an additional amount set-aside on E for w. Your project is to build a P unit apartment building to further your mission to provide low income elderly with affordable housing. You currently house Q independent living elderly residents in various units located on your current campus. You currently have R seniors on your waiting list. While this building will not allow you to facilitate the move-in of all the persons on your current list, it will allow you to provide relief to a large number of them.

Your project will cost u dollars and will be completed by C. Your project started early O but due to the COVID pandemic, which caused staffing shortages and supply chain delays, your project could not start until the end of O. This delay made it necessary to request a set-aside to combat the lingering pandemic delays and meet the expenditure requirements. You provided the location and layout of how the apartment building will be constructed, along with the following project timeline:

- Architect hired on F
- Schematic Design by G (not completed due to architect staff delays)
- Site Development Review by J
- Design Development by E
- Construction Contract by L
- Building Permit by M
- Construction completion by N (supply chain delays and construction staffing delays expected and accounted for in this estimate)
- Certificate of Occupancy by C

Your project is better accomplished by the set-aside approach due to the COVID pandemic, which caused staffing shortages and supply chain delays. As a result, you are unable to spend funds on your approved project according to your original timeline.

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

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 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.

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

Sincerely,

Stephen A. Martin
Director, Exempt Organizations
Rulings and Agreements

Letter 437