



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

Cincinnati, OH 45201

Release Number: 202345013

Release Date: 11/10/2023

Date: 08/14/2023

Employer ID number:

Person to contact:

Name:

ID number:

Telephone:

Fax:

LEGEND

B = Recipient

C = Place

D = Foundation

R = Date

S = Date

T = Date

U = Date

V = Date

W = Date

X = Date

Y = Date

Z = Date

x dollars = dollar amount

y dollars = dollar amount

z dollars = dollar amount

UIL: 4942.03-07

Dear :

Why you are receiving this letter

We received your R 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 wish to set aside a grant totaling x dollar to B. B is a charitable corporation that is recognized as exempt

under Section 501(c)(3) of the Internal Revenue Code (IRC). B has established a fund to support the restoration of the historic C.

C is owned and maintained by D. D is a non-profit community foundation and has established a fund to support the restoration of the historic house. B has established a fiscal sponsorship fund in support of the house restoration and entered into a fiscal sponsorship agreement with D in connection with the establishment of the fund.

You intend to provide a grant to B's fund in support of the restoration of C consistent with historic preservation standards. The total cost of the project is estimated to be approximately y dollars. The goal of the project is to enable the public and visitors to experience the beauty, craftsmanship, and innovation of C.

Your grant is subject to an agreement between you, B and D effective S. Pursuant to the terms of the agreement, you will make a matching grant of x dollars to the project fund to fund approximately one-third of the estimated cost of the project. It is anticipated that the remaining two-thirds of cost of the project will be funded by donations and grants because of fundraising undertaken by B and D in response to your matching grant.

Under terms of the agreement, if B and D collectively raise the matching funds and satisfy the agreement terms, you will disburse the funds to the project fund in a lump sum within 21 business days after the satisfaction of the agreement terms. B may make disbursements from the project fund to pay reimbursable costs of the project, provided that, unless otherwise agreed by you, such disbursements are limited to one-third of the total reimbursable costs incurred in connection with the project.

Reimbursable costs shall mean costs actually incurred by D for labor, materials, permit fees and similar fees for the project, including the labor, materials and other items described in the proposal. Reimbursable costs shall not include costs of publicly, planning, fundraising, legal or accounting services, financing, staff salaries, and other "soft costs" not directly incurred to procure labor, materials, or services for the project.

Your obligation to make the grant is subject the following conditions, unless waived by you:

- a) On or before T (the "Challenge Deadline"), D and the project fund shall have collectively received Eligible Matching Contributions for the project in an amount not less than z dollars in the aggregate and shall have provided you with satisfactory evidence that such Eligible Matching Contributions have been received.
- b) On or before U, you shall have received assurances satisfactory to it that D has engaged an architectural or contracting firm, approved by you, as the supervising architect or construction manager for the project.
- c) On or before V, D shall have submitted to you, and you will have approved in writing, the drawings, plans and specifications for the project.
- d) On or before W, you shall be satisfied, in your sole discretion, that D and the project fund have sufficient funding to complete the project.
- e) Prior to disbursement of any portion of the grant from the project account for the purchase of any materials or the performance of any work on the project, you shall have approved, in writing, the contractor, vendor or other supplier and all finally awarded contracts exceeding 5% of the total project costs for labor and materials.
- f) B shall be an organization currently described in Sections 501(c)(3) and 509(a)(1) or (2) of the IRC when the grant is initially paid to the fund and at the time of disbursement of any portion of the grant from the project account, and B represents that the grant will not result in the loss of B's classification as a publicly supported organization or sufficient written information, including financial data, will be provided to assure you that the grant will not result in the loss of B's status as a public supported organization.

To constitute an Eligible Matching Contribution, a contribution must be:

- a) Subject to the 25% Limitation (defined below), a contribution or government grant of cash or marketable securities earmarked for the project actually paid to or received by D or the project fund after X and prior to T. Loans and amounts not earmarked for the project shall not constitute Eligible Matching Contributions;
- b) Subject to the 25% Limitation (defined below), an irrevocable, unconditional, binding pledge from a private donor or an irrevocable, unconditional commitment from a governmental agency to contribute or grant cash or marketable securities to D or the project fund made after X and prior to T and payable not later than Y; or
- c) Subject to the 25% Limitation (defined below), an irrevocable, unconditional, binding commitment made after X and prior to T for an in-kind contribution to D for the project that has a readily ascertainable market value. In-kind contributions of materials and services shall be valued based upon the prices customarily charged by the provider of such materials and services in the project locale at the time of contribution. Services performed by volunteers or other persons who are not regularly engaged in the business of providing such services shall not be considered as Eligible Matching Contributions.

The 25% Limitation is defined as the amount of any contribution or pledge from any single donor exceeding 25% of the total estimated costs for the project that, in your sole discretion, may not qualify as an Eligible Matching Contribution.

Eligible Matching Contributions shall not include amounts not earmarked for the project, interest earned on amounts deposited in the project fund, loans, or the value of any new markets, historic or other tax credits attributable to the project.

Eligible Matching Contributions must not be commingled and must be deposited in an account that is separate from other funds of B, D, and the project fund.

Net proceeds received by D or the project fund from fundraising events or sales of goods that are earmarked for the project will not be considered Eligible Matching Contributions without your written advance approval, which may be withheld by you in your sole discretion.

Your right to approve the plans and the final contracts includes the right to approve:

- a) The plans and each of the final contracts, including material changes.
- b) The contractor or vendor to be a party to any final contract; and
- c) The materials and services to be supplied or performed by a contractor.

Pursuant to the terms of your agreement with B and D, payment of the grant will be made within 21 business days after the conditions set forth in the agreement are satisfied. Accordingly, payment must be made not later than Z (21 business days after the latest possible date for satisfaction of the specified conditions in the agreement), which is less than 60 months from the date of the set-aside.

In conclusion, you state that the set-aside was made by you as of S, the date of your agreement, and the amount set aside, as described above, must and will be paid out for the project within a period that ends not more than 60 months after 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 (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.

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 person shown above.

Sincerely,

Stephen A. Martin
Director, Exempt Organizations
Rulings and Agreements

Enclosures:
Redacted Letter 4797
Letter 437