



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

Date: 08/14/2023

Employer ID number:

Person to contact:

Name:

ID number:

Telephone:

Fax:

Release Number: 202345014

Release Date: 11/10/2023

#### LEGEND

B = Organization

C = Theatre

R = Date

S = Date

T = Date

U = Date

V = Date

W = Date

X = Date

Y = Date

Z = Date

x percent = Percent

y percent = Percent

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 currently recognized as exempt under Section 501(c)(3) of the Internal Revenue Code (IRC). B owns and maintains C. B is currently working

on the second phase of the restoration project which will return the theatre to its original appearance. The project will cost approximately y dollars.

The grant is subject to an agreement between you and B effective S. Pursuant to the terms of the agreement, you will make a matching grant of x dollars to B to fund approximately one-third of the estimated project cost. If B raises the matching funds and satisfies certain conditions of the agreement, you will disburse funds to B within 21 business days. B will deposit the funds in a project account and can, subject to the terms of the agreement, make disbursements for reimbursable costs. However, disbursements are limited to one-third of the total reimbursable costs incurred in connection with the project to the date of disbursement.

Reimbursable costs shall mean costs actually incurred by B for labor, materials, permit fees and similar fees for the project and shall not include costs of publicity, 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 grant to B is subject to the following conditions, unless waived by you in writing.

- a) On or before T (the Challenge Deadline), B shall have received eligible matching contributions for the project in an amount not less than z dollars and shall have provided you with evidence that such contributions have been received.
- b) On or before U, you have received assurances that B has engaged a supervising architectural or contracting firm approved by you to act as project manager.
- c) On or before V, you shall have approved, in writing, the project drawings, plans and specifications submitted by B.
- d) On or before W, you shall be satisfied that B has sufficient funding to complete the project.
- e) Prior to your disbursement of any portion of the grant for the project, you shall have approved, in writing, all awarded contracts exceeding x percent of the total project costs for the labor and/or materials.
- f) B shall be an organization currently described in Sections 501(c)(3) and 509(a)(1) or (2) of the IRC when any portion of the grant is paid. B shall represent that the grant will not result in the loss of their classification as a publicly supported organization as described in Section 170(b)(1)(A)(vi) or Section 509(a)(2) of the IRC, 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 y percent limitation (defined below), a contribution or government grant of cash or marketable securities earmarked for the project actually paid to or received by B after X and prior to T. Loans and amounts not earmarked for the project shall not constitute Eligible Matching Contributions.
- b) Subject to the y percent 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 B for the project made after X and prior to T and payable not later than Y; or
- c) Subject to the y percent limitation (defined below), an irrevocable, unconditional, binding commitment made after X and prior to T for an in-kind contribution to B 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 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 y percent limitation is defined as the amount of any contribution or pledge from any single donor exceeding y percent 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 account, 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.

Net proceeds received by B 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.

Your right to approve the plans and 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, payment of the grant will be made within 21 business days after the agreement conditions have been satisfied. Accordingly, payment must be made not later than Z, 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 of time 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](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: