



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

Date: 8/28/2023

Employer ID number:

Person to contact:

Name:  
ID number  
Telephone:  
Fax:

Release Number: 202347020

Release Date: 11/24/2023

UIL: 4942.03-07

#### LEGEND

B = Date  
C = Name  
D = Date  
E = Year  
F = Year  
G = Year  
H = Year  
J = Year

Dear :

#### Why you are receiving this letter

We received your 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 years ending B. Based on the information furnished, your request is approved.

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

#### What you need to do

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

You are a Trust formed from the Will of C, dated D. In E, the recipient of your funds sold its assets to a for-profit entity and ceased regular operations. The recipient remained intact solely to focus on winding down pre-closing liabilities. There were no contingent beneficiaries identified in the Will.

State law provided the approval of the sale of the original recipient's assets to a for-profit entity under the condition that an be created and made the new recipient of charitable assets after the sale. The Independent Foundation was established in F under Section 501(c)(3).

In G, your Trustee filed a petition in probate court for construction of language in the Will to determine the proper distribution and recipient of the accumulated and future income. The court issued a Decree in H, permitting distribution of income to the original recipient to pay for debts and expenses incurred while operating

prior to the sale. The filed an appeal to the Decree and a Motion to Stay proceedings pending the outcome of their appeal. The Motion to Stay was granted preventing you from making any distributions of income.

The original recipient and the filed a Joint Motion for Entry of Stipulated judgement. In J, the court granted the Motion that you shall distribute all accumulated and future income to the . This judgment is a full and final disposition of all issues in the appeal and the litigation terminated in J.

### **Basis for our determination**

#### **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 Treas. Reg. 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 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, the amounts which would have been distributed before each of the tax years ending B, 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).

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 Code or regulations 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 in 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 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 person shown above.

Sincerely,

Stephen A. Martin  
Director, Exempt Organizations  
Rulings and Agreements

Enclosures  
Redacted Letter 4797  
Letter 437