



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

Date:
11/29/2023
Employer ID number:
37-1328048
Person to contact:
Name:
ID number:
Telephone:
Fax:

Release Number: 202408010
Release Date: 2/23/2024

LEGEND

W = Date

X = Place

Y = Location

c percent = percentage amount

m dollars = dollar amount

N = Year

P = Year

q dollars = dollar amount

r dollars = dollar amount

s dollars = dollar amount

t dollars = dollar amount

UIL: 4942-03-07

Dear :

Why you are receiving this letter

We received your W 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 a private operating foundation whose primary function is to operate X located in Y.

The nature of the project requiring set-aside treatment is to research, redesign, and renovate X's main exhibit and gallery spaces, which have had no significant renovations since it opened at its current location. The gallery redesign project plan calls for the renovation of c percent of the museum's overall floor space. There are no plans to change the administrative and storage areas or expand the current site. The purpose of the project is to attract both new and repeat visitors.

You are requesting m dollars for tax year N and plan to add to this amount over the subsequent four tax years. Your internal research estimates the total additions to the set-aside through P to range between q dollars and r dollars, which would be divided equally over the subsequent four tax years ending in P. External research with consultants will help you better refine these amounts and timing.

X is a small operation with only two full-time employees and a modest seven-figure investment portfolio. The financial size of the project noted above is quite large compared to the discretionary part of your normal, historical operating budget of around m dollars. Your overall operating budget hovers around s dollars with t dollars being fixed. Therefore, using the set-aside provides a structured mechanism for you to responsibly plan ahead regarding project costs and obligations, as there are currently many unknowns regarding exact cost and timing for each phase of this large project. These benefits are why the set-aside method is preferred over immediate payment.

Your director stated the set aside will be spent during the time period not ending more than 60 months after the date of the first set aside. It is in your best interest to complete the project on a timely basis to minimize the impact of construction on museum visitors and staff. For example, the museum might choose to stage construction in the winter months when visitor attendance is lower. Therefore, the 60-month window provides the museum with that flexibility.

In the event that unforeseen circumstances arise that prevent you from spending the amounts in the set-aside from 60-months after inception, you will provide a statement that shows good cause why the 60-month period should be extended and gives the extension of time requested.

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

Enclosures:
Letter 4797 (Redacted)
Letter 437