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

Date:
08/11/2026

Employer ID number:

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

Release Number: 202645028
Release Date: 11/6/26

UIL: 4942.03-07

LEGEND
M = Date
N = University

P = Name
Q = Date
R = Date
S = Court
T = State
U = Year
V = Date
W = Year
X = Year
y dollars = Dollars
z dollars = Dollars

Dear Applicant:

Why you are receiving this letter
We received your M request for approval of a contingent set-aside under Internal Revenue Code (IRC) Section 4942(g)(2). Based upon the information furnished, your contingent set-aside is approved under Treasury Regulation (Treas. Reg.) Section 53.4942(a)-3(b)(9) of the Foundation and Similar Excise Taxes.

You are a nonexempt charitable trust described in IRC Section 4947(a)(2) and treated as a private non-operating foundation under Section 509(a).

What you need to do
Document your approved set-aside(s) in your records as pledges or obligations. 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.

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 trust for the benefit of N under the Last Will and Testament ("the Will") of P. The Will names N as the Trust's final sole beneficiary, which historically had been exempt under IRC Section 501(c)(3). On Q, N abruptly ceased all operations and filed for Chapter 7 bankruptcy. You have been unable to make your required distribution because the bankruptcy proceedings remain ongoing and have also resulted in an additional cy pres proceeding to determine the successor charitable beneficiaries of N's charitable funds. Your charitable beneficiary is therefore unclear, pending a court determination. On R, the S of T enjoined you to the proceeding regarding N indicating that you were not able to make a distribution to N as of Q.

Despite the pending bankruptcy proceeding, your trustee attempted to make an annual distribution to N in U to ensure that the Trust complied with the minimum distribution rules under IRC Section 4942. Specifically, on V, the Trustee made the required distribution to N, but that distribution was rejected and returned to the Trustee on the next day.

Upon the guidance from your tax professionals, you reported the under-distribution on your Form 990-PF and simultaneously requested an abatement of the IRC Section 4942 excise taxes associated with the under-distribution for the U tax year.

T law prohibits you from making a distribution to an organization other than N unless such distribution is made pursuant to a court order. Applicable law provides that, if a charitable purpose becomes impracticable, the court shall determine an alternative charitable purpose that is as near as possible to P's charitable intentions. Thus, under T law, you currently have no beneficiary until a new beneficiary is named by the court. You have petitioned the court to name a new beneficiary and expect to receive a court order naming a new beneficiary in W.

Therefore, you are requesting a contingent set-aside under IRC Section 4942(g)(2) and Treas. Reg. Section 53.4942(a)-3(b)(9). You have set aside the following Section 4942 distribution amounts and are requesting that a contingent set aside be granted for the amounts listed below, which are the undistributed income for tax years U and X:

- U: y dollars
- W: z dollars

You stand ready to distribute these amounts promptly upon your receipt of a court order naming a new beneficiary. You expect the court to name a new beneficiary in W and therefore, do not anticipate the need for additional set-asides besides those set forth above. Further, given the W date, you will be making the set-aside distributions within the required 60-month period.

These temporary set-asides will allow you to comply with your obligations under both state and federal law. To the extent the temporary set-asides are approved, you presume that no excise taxes will be assessed under IRC Section 4942 for the U tax year, and that the abatement request will be disregarded.

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 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 actually 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 that the amounts which would have been distributed in years U and X, but for the court's order precluding such distribution, qualify as contingent set-asides 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 the 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** 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:
Letter 437