

**Internal Revenue Service
Director, Exempt Organizations**

**Department of the Treasury
P.O. Box 2508 - Room 4122
Cincinnati, Ohio 45201**

Release Number: **201131032**
Release Date: 8/5/2011
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Employer Identification Number:

Person to Contact - ID#:

Contact Telephone Numbers:

Phone
Fax

**UIL
4942.03-07**

LEGEND

A= State
B= Name of Public charity.
C= Name of Historical property
D= Name of County Department
t = \$Amount
u= \$Amount
v= \$Amount
w= Date
x= Date
y= Date
z= Date

Dear :

By letter dated November 19, 2010, you requested a determination that a set-aside in the amount of \$t for the taxable year ending December 31, 2010, meets the requirements of Section 4942(g)(2)(B)(i) and accordingly constitutes a qualifying distribution under section 4942(g).

FACTS

You are incorporated under the laws of the State of A, are exempt from federal income tax under section 501(c)(3) of the Code, and are classified as a private non-operating foundation under section 509(a).

You wish to set aside \$t for the purpose of a matching grant in support of a project of B, a publicly supported organization exempt under Section 501(c)(3) of the Internal Revenue Code. B preserves and provides upkeep for C, an historically and architecturally significant structure which is part of a public park owned by D. B, under an agreement with D, manages and maintains C. B and D have determined that basic flaws in the current buildings hinder public access and interpretation and will in time lead to a degradation of the property. B has undertaken to restore the C property. The total cost of the project is estimated to be \$u.

By the terms of your agreement with B, you shall make a matching grant of \$t, one third of the estimated cost of the restoration project. The remaining two thirds of the costs, \$v, will be funded by grants and donations to B through a fundraising campaign based on the matching grant. The grant will be paid only if B has received eligible matching contributions, including binding pledges and in-kind contributions, in an amount not less than \$v by a date on or before w. The grant is also subject to certain other conditions precedent, including your approvals of the architect and architect's plans, and your satisfaction that B has sufficient funding to complete the restoration project as embodied in the plan. The grant will be disbursed in a lump sum to B within 10 days of its satisfaction of these conditions precedent, no later than x, and B will complete the project on or before z, both dates being within 60 months of y, the date of the set-aside.

Upon receipt of the funds from you, B shall deposit the funds in a separate Account and subject to the satisfaction of all conditions set forth in the Agreement, B may make disbursements from the Account to pay reimbursable costs of the restoration project, provided that, unless otherwise agreed by you, disbursements from the account shall be limited to one third of the total reimbursable costs incurred in connection with the restoration project. As stated in the Agreement, B shall use the gift solely for reimbursable costs incurred in connection with the restoration project and for no other purpose. Prior to disbursement of any portion of the grant from the Account B shall submit to you all contracts with vendors, contractors and other suppliers and obtain your approval in writing. No additions to the set-aside are planned.

LAW

Section 4942(g)(1) of the Code defines "qualifying distribution" as (a) any amount paid to accomplish one or more purposes described in section 170(c)(2)(B), other than any contribution to (i) an organization controlled by the foundation or one or more disqualified persons, or (ii) a private foundation which is not an operating foundation, except as otherwise provided; (b) any amount paid to acquire an asset used directly in carrying out one or more purposes described in section 170(c)(2)(B).

Section 4942(g)(2)(A) of the Code provides that, for all taxable years beginning on or after January 1, 1975, an amount set aside for a specific project within one or more purposes of section 170(c)(2)(B) may be treated as a qualifying distribution if the amount meets the requirements of section 4942(g)(2)(B).

Section 4942(g)(2)(B)(i) of the Code provides that an amount set aside for a specific project may be treated as a qualifying distribution if, at the time of the set-aside, the foundation establishes to the satisfaction of the Secretary the amount set aside will be paid for the specific project within five years, and the specific project is one that can better be accomplished by the set-aside of income than by the immediate payment of funds (the "suitability test").

Section 53.4942(a)-3(a)(2)(iii) of the Foundation and Similar Excise Tax Regulations defines as a qualifying distribution any amount set aside within the meaning of paragraph (b) of section 3.

Section 53.4942(a)-3(b)(1) provides that the amounts of income set aside for a specific project for one or more of the purposes in section 170(c)(1) or 170(c)(2)(B) of the Code may be treated as qualifying distributions for the tax year(s) in which such amounts are set aside (but not in the tax year in which actually paid) if the requirements of section 4942(g)(2) and paragraph (b) are satisfied. The requirements of paragraph (b) are satisfied if the foundation establishes to the satisfaction of the Commissioner that the amount set aside will be paid for the specific project within 60 months after it is set aside, and (i) the set-aside otherwise meets the suitability test of section 53.4942(a)-3(b)(2) or (ii) the foundation satisfies the cash distribution test.

Section 53.4942(a)-3(b)(2) of the regulations provides that the suitability test for a set-aside is met if the foundation establishes the specific project is one in which relatively long-term grants or expenditures must be made in order to assure the continuity of particular charitable projects or program-related investments, or where grants are made as part of a matching grant program.

Section 53.4942(a)-3(b)(7)(i) provides that a private foundation must obtain Internal Revenue Service approval of its set-aside of income under the suitability test by applying before the end of the tax year in which the amount is set aside.

In Revenue Ruling 77-7, 1977-1 CB 354, the term "specific project" as defined in section 53.4942(a)-3(b)(2) of the Excise Tax Regulations was held to include a building project to be undertaken by a public charity unrelated to the foundation making the set-aside.

ANALYSIS

You have sought timely approval of your set-aside of income in accordance with Section 53.4942(a)-3(b)(7)(i).

As required by Section 4942(g)(2)(A) of the Code and Section 53.4942(a)-3(b)(1) of the Regulations, your proposed set-aside will be for a specific project for one or more of the purposes in section 170(c)(2)(B) of the Code. As in Revenue Ruling 77-7, the "specific project" is a building project to be undertaken by a public charity unrelated to you. The building project is in furtherance of educational purposes within the meaning of in section 170(c)(2)(B).

You have represented that the amount set-aside for this specific project will be paid out within 60 months from the set-aside, as required by section 4942(g)(2)(B)(i) of the Code and section 53.4942(a)-3(b)(1) of the regulations.

Your project can better be accomplished by a set-aside of income than by the immediate payment of funds. The specific project is one in which relatively long-term grants or expenditures must be made as part of a matching grant program.

Your project therefore satisfies the suitability test as set forth in Section 4942(g)(2)(B)(i) of the Code and Section 53.4942(a)-3(b)(2) of the Regulations.

RULING

Based on the foregoing, the set-aside of \$t for the taxable year ending December 31, 2010, meets the requirements of Section 4942(g)(2)(B)(i) and accordingly constitutes a qualifying distribution under section 4942(g).

We direct your attention to Section 53.4942(a)-3(b)(8) of the regulations, 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 section 53.4942(a)-2(c)(1) of the regulations), and any income attributable to a set-aside must be taken into account in computing adjusted net income (see section 53.4942(a)-2(d) of the regulations).

This ruling is based 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.

This ruling will be made available for public inspection under section 6110 of the Code after certain deletions of identifying information are made. For details, see enclosed Notice 437, *Notice of Intention to Disclose*. A copy of this ruling with deletions that we intend to make available for public inspection is attached to Notice 437. If you disagree with our proposed deletions, you should follow the instructions in Notice 437.

This ruling letter is directed only to the organizations that requested them. Section 6110(k)(3) of the Code provides that they may not be used or cited as precedent.

Please keep a copy of this ruling letter in your permanent records.

Copies of this letter have been sent to your authorized representatives.

If you have any questions about this ruling, please contact the persons whose name and telephone number are shown above in the heading of this letter.

Sincerely yours,

Lois G. Lerner
Director, Exempt Organizations

Enclosure:

Notice 437
Redacted copy of Letter.