

Internal Revenue Service
P.O. Box 2508
Cincinnati, OH 45201

Department of the Treasury

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Employer Identification Number:

Contact Person - ID Number:

Contact Telephone Number:

LEGEND

B= Country
C= City
D= City
F = Organization
G = Event
H = Date
J = Year
K = Year
x dollars = Amount
y dollars = Amount
z dollars = Amount

UIL

4942.03-07

Dear _____ :

Why you are receiving this letter

This is our response to your December 10, 2015, letter requesting approval of a set-aside under Internal Revenue Code section 4942(g)(2). You've been recognized as tax-exempt under section 501(c)(3) of the Code and have been determined to be a private foundation under section 509(a).

Our determination

Based on the information furnished, your set-aside program is approved under Internal Revenue Code section 4942(g)(2). As required under section 4942(g)(2), the set aside amount must be paid within the 60-month period after the date of the first set-aside.

Description of set-aside request

You plan to commit a total of x dollars over a five year period for the relocation of the F in B from D to C. You requested to set aside y dollars no later than H, as a distributable amount for calendar year J. You estimate that you will make additions to the initial set-aside in the amount of z dollars in each of the four years following the initial set-aside.

The F is a public interest incorporated organization in B. It is currently exempt from tax on its fixed real property in D and any profits derived from its public interest operations. Since the F is a public interest incorporated organization, it is subject to laws that are similar to the laws applicable to tax-exempt organizations in the U.S. The F's objectives include collecting, storing, and preserving works of art, conducting research and survey related activities concerning art and related documents, and undertaking activities for the public by spreading knowledge and developing local culture. The F maintains a permanent collection of works of art and has approximately 50 of those works on display at a time. The F is open to the public six days a week and periodically organizes art-related lectures and presentations. There is also a library that art historians and researchers may access upon request.

In K, the F began investigating the acquisition of a site for a C branch. After receiving recommendations from a consultant, it was determined that the F's operations should be relocated from D to C. The relocation is expected to result in a dramatic increase in visitors along with an improvement in the ability to recruit curators and other staff members. At the beginning of J, the F provided you with a document describing its plans to relocate and a detailed explanation of the reasons for relocation. The document also provided an estimated budget for relocation. Your Board of Directors then adopted a corporate resolution approving the F's plan to relocate and agreeing to assist with the relocation.

You indicate that the project can be better accomplished with a set aside because although the F has been actively searching for an appropriate site, land is extremely scarce in C and it has been difficult to find a suitable location. Therefore, it is not possible to predict when a location will be found. Additionally, even if the location is found and acquired, there are no contractors available in C at this time due to the heavy demand from the upcoming G. The F would prefer not to pay property tax on undeveloped land for several years before construction can begin so there is an incentive to defer the acquisition of the site until construction can be started. Also, the F does not want to incur the costs of hiring architects, consultants, or other personnel for the relocation until a new location has been found.

You and the F intend to enter into a grant agreement under which you will disburse set aside funds to the F over a period of time expected to extend for several years as various events occur. For instance, upon the F's notification to you that it has located a site for the new building and will be entering into a purchase agreement, you will disburse an amount equal to all or part of the down payment. You will then disburse all or part of the remaining purchase price when the purchase of the site closes. You will also disburse funds when the F notifies you that it will be entering into a contract with an architectural firm to design the new building or with a contractor to construct the new building. Under the terms of the grant agreement, the F will be required to provide you with assurances that all necessary approvals, authorizations, consents, and permits from the applicable governmental authorities were properly obtained before you make any disbursements. The F will also be

required to provide you with copies of the site purchase contract, architectural services contract, construction contract, and other services contracts to show the costs incurred. In addition, the F will have to provide you with periodic progress reports about the relocation. Finally, the grant agreement will provide that disbursements for the relocation must be made and applied within sixty months of the date the amounts were first set-aside.

Basis for our determination

Internal Revenue Code section 4942(g)(2)(A) states that an amount set aside for a specific project, which includes one or more purposes described in section 170(c)(2)(B), may be treated as a qualifying distribution if it meets the requirements of section 4942(g)(2)(B).

Section 4942(g)(2)(B) of the Code 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.

Section 4942(g)(2)(B)(i) of the Code 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.

Section 53.4942(a)-3(b)(1) of the Foundations and Similar Excise Taxes Regulations 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 section 53.4942(a)-3(b)(2).

Section 53.4942(a)-3(b)(2) of the Foundations and Similar Excise Taxes Regulations 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 Internal Revenue Code section 4942(g)(2).

What you must do

Your approved set-aside(s) will be documented on your records as pledges or obligations to be paid by the date specified. The amounts set aside will be taken into account to determine your minimum investment return under Internal Revenue Code section 4942(e)(1)(A), and the income attributable to your set aside(s) will also be taken into account in computing your adjusted net income under section 4942(f) of the Code.

Additional information

This determination is directed only to the organization that requested it. Internal Revenue Code section 6110(k)(3) provides that it may not be used or cited as a precedent.

Please keep a copy of this letter in your records. We have sent a copy of this letter to your representative as indicated in your power of attorney.

If you have any questions, please contact the person listed in the heading of this letter.

Sincerely,

Jeffrey I. Cooper
Director, Exempt Organizations
Rulings and Agreements

Enclosure