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

Department of the Treasury

Number: **201821015**
Release Date: 5/25/2018

Employer Identification Number:

Contact Person - ID Number:

Contact Telephone Number:

Date: February 28, 2018

LEGEND:
B = state
C = organization
D = location
E = date
F = date
G = date
H = date
J = date
K = date
L = date
m dollars = amount
n dollars = amount
p dollars = amount
Q = date

UIL:
4942.03-07

Dear

Why you are receiving this letter

This is our response to your September 20, 2017 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 were incorporated in the state of B. You wish to set aside a grant of m dollars to C as part of a matching grant program. C is a 501(c)(3) public charity that promotes history in its local area, including the architecturally significant D, which was added to the National Register of Historic Places in Q. C proposed a project to preserve and restore D. No additions to the set-aside are currently planned. The purpose of the grant is to assist in funding the restoration of the interior and exterior of D. D will house the History Center operated by C and will contain engaging exhibits for visitors, as well as program space, a library, and a classroom.

Your grant will support restoration costs for the house. The total cost of the restoration project is estimated to be n dollars; you will make a matching grant for m dollars to fund one third of the estimated costs. It is anticipated that the remaining two-thirds of the costs of the project will be funded by donations and grants made to C because of fundraising activities undertaken by C in response to your matching grant challenge.

You submitted a detailed agreement with C. Under the terms of the agreement, if C raises the matching funds and satisfies certain other conditions of the agreement, you will disburse the funds to C in a lump sum within 21 business days. Upon receipt of the funds from you, C will deposit the funds in a separate interest bearing account labeled the Project Account. Subject to the satisfaction of all of the conditions set forth in the agreement, C may make disbursements from the account to pay reimbursable costs. The term, "reimbursable costs" means costs that C actually incurred for labor, materials, fees and permits for the project. Reimbursable costs will not include the costs of publicity, planning, fundraising, legal and accounting services, financing, staff salaries, and other "soft costs" not directly incurred to procure labor, materials, or services for the restoration project. Disbursements from the Project Account are limited to one-third of the total Reimbursable Costs incurred in connection with the project to the date of disbursement.

The grant shall be subject to the following conditions outlined in your agreement with C unless you agree to waive any condition in writing:

(a) On or before E, which is the challenge deadline, (i) C shall have received eligible matching contributions for not less than p dollars and (ii) shall have provided you satisfactory evidence that such funds have been received. To qualify as an eligible matching contribution, (i) a contribution must be a contribution or government grant of cash or marketable securities earmarked for the project actually paid or received on or after F (the date of your board meeting at which the grant was awarded and prior to E (loans and amounts not earmarked for the restoration project shall not constitute eligible matching contributions), (ii) An irrevocable, unconditional, binding pledge from a private donor or an irrevocable, unconditional commitment from a governmental agency to contribute or grant cash or marketable securities for the project made after F and prior to E and payable not later than the projected date for substantial completion of the project; or (iii) an irrevocable, unconditional, binding commitment made after F and prior to E for an in-kind contribution for the project that has a readily ascertainable market value. In-kind contributions of materials and services shall be valued based upon the prices customarily charged by the provider of such materials and services in the project locale at the time of contribution. Services performed by volunteers or other persons who are not regularly engaged in the business of providing such services shall not be considered as eligible matching contributions.

(b) On or before G, you shall have received satisfactory assurances that C has engaged an architectural or contracting firm approved by you as the supervising architect or construction manager for the project.

(c) On or before H, C shall have submitted for your approval and you will approve in writing, all plans for the project.

(d) On or before J, you shall be satisfied that C has sufficient funding to complete the project as defined in the plans.

(e) Prior to disbursement of any portion of your grant from the Project Account for the purchase of any materials or the performance of any work on the project, you will provide C written approval on the contractor, vendor or other supplier and all finally awarded contracts exceeding 5% of the total project costs for the labor and/or materials. Your right to approve the plans and the final contracts includes rights to approve the plans and each of the final contracts, including material changes, the contractor or vendor to be a party to any final contract; and the materials and services to be supplied or performed by a contractor.

Furthermore, the agreement with C gives you the right to approve the plans and the final contracts and includes the right to approve:

(a) The plans and each of the final contracts, including material changes;

(b) The contractor or vendor to be a party to any final contract; and

(c) The materials and services to be supplied or performed by a contractor.

Because your agreement with C requires the payment of the grant be made within 21 business days after the conditions of the agreement are satisfied, payment must be made not later than K (21 business days after the latest possible date for satisfaction of the specified conditions which is less than 60 months from the date of the set-aside).

You expect to pay the amount set aside within 60 months or five years, as required by Treasury Regulation Section 53.4942(a)-3(b)(1) and Section 4942(g)(2)(B) of the Code. The agreement provides that the grant be paid no later than K and that the project be completed on or before L.

You stated the set-aside satisfies the suitability test under Treas Reg Section 53.4942(a)-3(b)(2) because the project can be better accomplished by use of a set-aside. Specifically, the purpose of the grant requires the use of a matching-grant program and the preservation of control over the long-term project, both of which can be better accomplished by use of a set-aside. With regard to the matching-grant program, you believe that the program is necessary to increase grant funding to C from the community-at-large. Because of the extent and cost of restoration needed for the project, grants from the community-at-large must form an essential and significant part of the project funding. Through your matching-grant program, you wish to encourage other donors to support the project. You and C have agreed on the time period to raise the necessary matching funds. You believe it is critical to maintain quality control and to accomplish this you must retain a degree of control over the restoration process. You want to ensure the historical features are preserved. By making the disbursement of the funds dependent upon approval of outside consultants and contractors and of drawings, plans and specifications of the project, you believe you can best meet the goal of restoring D and assure that the final restoration project is consistent in scope and concept with the project originally submitted to you by C.

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.

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

Sincerely,

Stephen A. Martin
Director, Exempt Organizations
Rulings and Agreements