

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

Department of the Treasury

Number: **202017036**
Release Date: 4/24/2020
Date: **January 30, 2020**

Employer Identification Number:

Contact Person - ID Number:

Contact Telephone Number:

LEGEND

M = Name

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 October 11, 2018 letter requesting approval of a set-aside under Internal Revenue Code (IRC) Section 4942(g)(2). You've been recognized as tax-exempt under IRC Section 501(c)(3) and have been determined to be a private foundation under IRC Section 509(a).

Our determination

Based on the information furnished, your set-aside program is approved under IRC 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 expand and improve an existing art museum facility you own at an estimated total cost of x dollars. The facility is leased to and operated by M, which is recognized as exempt under IRC Section 501(c)(3), and the project will include the addition of gallery space to the facility. It is expected that construction will take 12-18 months.

You are requesting a set-aside because you do not have sufficient income to make an immediate payment of the funds necessary to pay for the improvement, and you are unable to obtain a loan to pay for all construction costs. Your endowment generates annual income of approximately y dollars, which you will set aside in each fiscal year of a five-year period to accrue the funds necessary to pay for a portion of construction costs. The balance of z dollars-- the difference

between the estimated cost of construction and the total amount you will set-aside - will be financed with a construction loan.

You attested that all income earmarked and set aside under the proposed plan will be fully expended within a five-year period commencing with the date of your initial set aside.

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 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).

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 IRC 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 IRC Section 4942(f).

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.

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