

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

Department of the Treasury

Date: January 23, 2021

Employer Identification Number:

Number: 202116018

Contact Person - ID Number:

Release Date: 4/23/2021

Contact Telephone Number:

LEGEND

C = Name of Organization
D = Name of Public-School Board
m = Amount

UIL

4942.03-07

Dear :

Why you are receiving this letter

This is our response to your December 31, 2019 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 are requesting a set-aside as described in Internal Revenue Code Section 4942(g)(2) for the purpose of constructing and operating a public charter school. The public charter school will provide elementary school education to the general public at no direct cost to the families of students. The facilities that will be used for the charter school are expected to cost approximately m dollars to construct and take less than sixty (60) months to complete.

The public charter school will be named C. Initially, C will provide education for students who are in kindergarten through sixth grade and may potentially expand to provide seventh and eighth grade education in the future. You have hired a consulting firm that has extensive experience in helping not-for-profit organizations design, establish and operate charter schools, and is proceeding based upon the

recommendations of such consultants and communications with D and other individuals and organizations that are expected to be involved in this project.

You are currently working with various legal advisors, and experts that focus in obtaining government approval for charter schools, in order to obtain approval from D to open and operate a charter school at your planned location. You intend to commence operations for the _____ school year. In the event that the project cannot be completed in time to commence operation for the _____ school year, the charter school is expected to be operational for the _____ school year.

The approval process for the operation of the public charter school followed by the construction of the school facilities will take more than a year to complete and is better served by way of a set-aside rather than the immediate payment of funds.

The initial expenses associated with the approval of the new charter school will be legal and advisory fees associated with the application to D for approval to open a charter elementary school, employee related expenses for certain employees who will be assisting with such application and planning, and for expenses relating to the initial stages of building an elementary school facility. The expenses leading up to the construction of the school building are expected to be minimal in comparison to the cost of constructing the school building.

The building of an elementary school facility will require engineers, architects, contractors, professional consultants, and other professionals for the study of the subject property, surveying, analysis, planning, obtaining applicable governmental permits, and otherwise proceeding as required to commence construction of the school facility. These expenses will also be minimal in comparison to the actual construction costs of the school, and a set-aside would help you to preserve capital to cover expenses associated with the construction of the school.

These initial planning items could take up to eighteen (18) months, because there will be a coordinated effort on behalf of a number of various professionals to ensure that the proper governmental approvals are obtained, and that approval is received from D. Unfortunately, timing in relation to obtaining governmental permits cannot readily be determined. It is clear that an application to open a charter school that is legally sufficient must eventually be approved by D, but there may be a period of deliberation and coordination between you and D, based upon the desired operation of the school, when the school will open, and how many students the school will accept.

Additionally, once all required permits have been obtained, the design for the school facilities have been finalized and approved, and the application to open the charter school has been approved, construction can commence on the school facilities. Due to the size and scope of the project, it would not be possible to obtain all of the necessary approvals and complete construction of the facilities

within one (1) year. For this reason, a set-aside will better facilitate the construction and administrative procedures required to complete the project.

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

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