TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

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A =
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Dear

We have considered your ruling request for approval of a set-aside under section 4942(g)(2)(B)(i) of the Internal Revenue Code and section 53.4942(a)-3(b)(2) of the Foundations and Similar Excise Taxes Regulations.

A is a private operating foundation under section 501(c)(3) of the Code. A is expecting a substantial contribution at any time. A plans to own rainforest lands in B and C for environmental and ecological preservation. A intends to manage the lands and in addition to preservation and conservation, to promote scientific and educational studies.

The specific project is the purchase of rainforest lands in B. A desires to purchase rainforest lands and construct a facility for administration to be used by researchers and visitors. The real estate will be the asset held by the foundation for its charitable, scientific and educational purposes. The total amount to be set-aside for the next four years and expected to be used for the purchase of real property is $y. A also must maintain sufficient income generating assets to support the activities which further its exempt purposes.

A anticipates a contribution of approximately $z in its initial year which is to be invested to build a substantial fund for the purchase of lands. A expects to receive similar amounts from its founder. Since A's purpose is the preservation and conservation of rainforests, it has determined that it is essential to build a fund of sufficient size to acquire as much land as is possible and practical at the outset. A does not have a reason to make expenditures for other activities until the rainforests are purchased. A represents that the amount to be set aside for each tax year for this specific project will be paid out within 60 months from the time when the amount for each tax year is set aside.

The amounts to be set aside, $z per year, would be the amounts that would otherwise be required to be distributed from the annual funding expected for four years. These funds should generate a conservative five percent (5%) income on investments. A's start up costs and expenditures for planning and development of an acquisition and management plan for the rainforests may be about $x per year. All additional monies will be retained and reinvested for the purchase of the real estate.

RULING REQUESTED

A set-aside of funds in the amount of $z per year for each of the tax years ending Date a, Date b, Date c and Date d for the specific project describe above, will be treated as a qualifying distribution for each tax year under section 4942(g)(2)(b)(i) of the Code and section 53.4942(a)-3(b)(2) of the regulations.

LAW

Section 4942 of the Code imposes an excise tax on any private foundation that does not expend qualifying distributions for exempt purposes at least equal to its distributable amount for its tax year.

Section 4942(g)(1) of the Code, in substance and generally, defines "qualifying distribution" as any amount paid for tax exempt purposes as defined in section 170(c)(2)(B).

Section 4942(g)(2)(A) of the Code provides an amount of income 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 set-aside requirements of section 4942(g)(2(B).

Section 4942(g)(2)(B) of the Code provides, in pertinent part, an amount set aside for a specific project may be treated as a qualifying distribution if, at the time of the set-aside, the private foundation establishes to the satisfaction of the Secretary the amount set aside will be paid for the specific project within five years and the suitability test for a set-aside under section 4942(g)(2)(B)(i) is met.

Section 4942(g)(2)(B)(i) of the Code provides a suitability test in which the private foundation at the time of the set-aside must establish to the satisfaction of the Secretary the specific project is one that can better be accomplished by the set-aside of income rather than by the immediate payment of funds.

Section 53.4942(a)-3(b)(1) of the regulations provides 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)(B)(i) are met, the foundation establishes to the satisfaction of the Commissioner the amount set aside will be paid for the specific project within 60 months after it is set aside, and the set-aside otherwise meets the suitability test of section 53.4942(a)-3(b)(2) of the regulations.

Section 53.4942(a)-3(b)(2) of the regulations provides its 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. The regulation cites as an example of a suitable project a plan to fund a specific research program that is of such magnitude as to require an accumulation of funds before beginning the research, even though not all of the details of the program have been finalized.

Section 53.4942(a)-3(b)(7)(i) of the regulations provides 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.

ANALYSIS

A is an exempt private foundation and its set-aside of income for a specific project is within the charitable purposes of section 170(c)(2)(B) of the Code. A's project is better accomplished by a set-aside of income, rather than by immediate payment of funds, because this set-aside will allow A to retain control over the distribution of its funds to ensure (i) the acquisition of the lands and construction of facilities progresses as planned, (ii) contributions from A are used solely for the purpose of constructing the facility. A has sought timely approval of its set-aside of income in advance of the time when the amounts of income are to be set aside, as required by section 53.4942(a)-3(b)(7)(i) of the regulations. Therefore, A satisfies the requirements of section 4942(g)(2)(B)(i) of the Code and section 53.4942(a)(-3(b)(2) of the regulations (the "suitability test")

RULING

A set-aside of funds in the amount of $z per year for each of the tax years ending Date a, Date b, Date c and Date d for the specific project describe above, will be treated as a qualifying distribution for each tax year under section 4942(g)(2)(b)(i) of the Code and section 53.4942(a)-3(b)(2) of the regulations.

Section 53.4942(a)-3(b)(8) of the regulations provides any set-aside approved by the Internal Revenue Service must 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)) 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)).

This ruling is based on the understanding there will be no material changes in the facts upon which it is based.

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.

Sincerely,

Steven Grodnitzky
Manager, Exempt Organizations
Technical Group 1

Enclosure
Notice 437