TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

Release Number: **201029040**
Release Date: 7/23/10
Date: April 29, 2010
XXXXXX
XXXXXX
XXXXXX

Contact Person:

Identification Number:

Telephone Number:

Employer Identification Number: XXXXXX

Uniform Issue List:
4942.03-05

Legend:

Property	=	XXXXXX
A	=	XXXXXX
B	=	XXXXXX
C	=	XXXXXX
n	=	XXXXXX
o	=	XXXXXX
p	=	XXXXXX
q	=	XXXXXX
r	=	XXXXXX
s	=	XXXXXX

Dear

This is in response to your ruling request dated February 27, 2009 concerning the effects of your purchase, conversion, and maintenance of certain property in A.

You are a private non-operating foundation described in sections 501(c)(3) and section 509(a) of the Internal Revenue Code (the "Code"). You were established in A for general charitable purposes.

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You make grants primarily to develop and strengthen programs and projects at educational institutions in the academic areas of fine arts, science, business, law, and medicine and at health institutions in the areas of heart, eye, and cancer for surgery, treatment, and research. You also give consideration to grant applications from arts and cultural affairs institutions, established civic community affairs institutions, and public affairs institutions.

On n, you acquired land and a building located at Property for $o. You formed B, a limited liability company, wholly owned by you. You then contributed the Property to B.

On p, your Board of Directors (the "Board") determined that the Property would be ideal for the planned cultural center, and began planning how the Property could be used for charitable, educational, and cultural purposes as well as what alterations and renovations were needed to meet the Board's goals. Through the subsequent three years, the Board was engaged in renovations, plans, and negotiations which ultimately led to the opening of a cultural center. The renovations included the construction of two art galleries; the Gallery and the Gallery. The Gallery has an environmentally constant temperature of 68 degrees Fahrenheit and humidity constant at 50 percent, thus qualifying the cultural center for exhibitions with requirements of constant temperature and humidity. The renovations also included the installation of a commercial grade kitchen for culinary programs. The renovations began in q and were substantially completed in r.

The mission of this cultural center, C, is to promote the education, exploration, and conservation of culture in A through art exhibitions and culinary programs. The Board has developed a website for C that is meant to educate and inform the public as to the purpose of the cultural center and its upcoming programs and events.

C's grand opening was held on s. Over people attended. The program for the grand opening included the center's first art exhibit and a demonstration and tasting with a visiting chef.

Three four-hour long cooking classes were held shortly after the opening of C. The art exhibit shown during the grand opening remained open to the general public, free of charge, for most of the month in which C opened.

The Board plans to host up to four visiting chefs from various regions of per year. The Board also plans to host at least four art exhibits annually, each with a duration of two to three months. The Board is working with several museums to facilitate and coordinate the provision of various art exhibitions.

The only other use that you may make of the Property is renting the Property free of charge, or for a nominal fee, to other tax exempt art organizations.

RULINGS REQUESTED

You have requested the following rulings:

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1. The fair market value of the Property is a qualifying distribution under section 4942(g)(1) of the Code and section 53.4942(a)-3(a)(5) of the Foundation and Similar Excise Taxes Regulations (the "Regulations") in your fiscal year ending October 31, 2005.

2. The fair market value of the Property is excluded from the calculation of your minimum investment return pursuant to section 4942(e)(1) of the Code.

3. The expenses incurred in operating and maintaining the Property constitute qualifying distributions within the meaning of Section 4942(g)(1) of the Code.

LAW

Section 4942(a) of the Code imposes an excise tax of thirty percent on a private nonoperating foundation's undistributed income.

Section 4942(c) of the Code defines "undistributed income" as the amount by which the distributable amount exceeds qualifying distributions.

Section 4942(d) of the Code defines "distributable amount" as the sum of the minimum investment return and certain recouped qualifying distributions reduced by the sum of the taxes imposed on the private foundation for the taxable year under subtitle A and section 4940 of the Code.

Section 4942(e)(1) of the Code defines "minimum investment return" as five percent of the excess of the aggregate fair market value of all assets of the foundation other than those which are used, or held for use, directly in carrying out the foundation's exempt purpose, over the acquisition indebtedness with respect to those assets.

Section 4942(g)(1) of the Code defines "qualifying distribution" as any amount (including that portion of reasonable and necessary administrative expenses) paid to accomplish one or more purposes described in section 170(c)(2)(B) of the Code, other than certain contributions, and any amount paid to acquire an asset used, or held for use, directly in carrying out one or more purposes described in section 170(c)(2)(B).

Section 53.4942(a)-2(c)(3)(i) of the Regulations states, among other things, that an asset is "used (or held for use) directly in carrying out the foundation's exempt purpose" only if the asset is actually used by the foundation in the carrying out of the charitable, educational, or other similar purpose which gives rise to the exempt status of the foundation.

Section 53.4942(a)-2(c)(3)(ii)(b) of the Regulations provides that real estate or the portion of a building used by the foundation directly in its charitable, educational, or other similar exempt activities is an example of an asset that is used, or held for use, directly in carrying out the foundation's exempt purpose.

Section 53.4942(a)-2(c)(3)(ii)(f) of the Regulations provides that any property leased by a foundation in carrying out its charitable, educational, or other similar exempt purpose at no cost (or at a nominal rent) to the lessee is an example of an asset that is used, or held for use, directly in carrying out the foundation's exempt purpose.

Section 53.4942(a)-3(a)(5) of the Regulations states that if an asset that was not used, or held for use, directly in carrying out one or more of the foundation's exempt purposes is subsequently converted to such a use, the fair market value of that converted asset as of the date of its conversion may be treated as a qualifying distribution.

Example 1 of section 53.4942(a)-3(a)(8) of the Regulations provides that both compensation to employees for performing work on activities in furtherance of an exempt purpose and overhead attributable to activities in furtherance of an exempt purpose are examples of reasonable administrative expenses paid to accomplish section 170(c)(1) or (2)(B) purposes under section 4942(g)(1) of the Code.

Example 3 of section 53.4942(a)-3(a)(8) of the Regulations provides that the purchase of a building for the exhibition of paintings by a private foundation engaged in holding paintings and exhibiting them to the public is a qualifying distribution.

Rev. Rul. 78-102, 1978-1 C.B. 379, addresses the correct conversion date of real property for the purposes of section 53.4942(a)-3(a)(5) of the Regulations. The ruling states that the date of conversion is the date the foundation adopts and immediately proceeds to implement a plan for the exempt use of the property, even though the actual conversion is not completed until later.

ANALYSIS

You have used and plan to use the <u>Property</u> to exhibit art and host culinary classes. This is similar to Example 3 of section 53.4942(a)-3(a)(8) of the Regulations. As such, this use of the <u>Property</u> would be deemed to be directly in carrying out your exempt purposes in accordance with section 53.4942(a)-2(c)(3)(ii)(b) of the Regulations.

<u>Issue 1</u>:

Because the <u>Property</u> is being used, or held for use, directly in carrying out your exempt purpose, any amount paid to acquire the <u>Property</u> would be treated as a qualifying distribution under section 4942(g)(1) of the Code. Since the <u>Property</u> was not used, or held for use, directly in carrying out your exempt purpose until sometime after its purchase, the date that the <u>Property</u> was converted to such a use is the date on which the amount paid to acquire the <u>Property</u> would be treated as a qualifying distribution. According to Rev. Rul. 78-102, the date of conversion should be the date that you adopted and immediately proceeded to implement a plan for the exempt use of the property. The Board determined that the <u>Property</u> would be ideal for the planned cultural center, and began planning how the <u>Property</u> could be used for charitable, educational, and cultural purposes as well as what alterations and renovations were needed to meet the Board's goals on <u>p</u>. Thus, the appropriate date on which the amount paid to acquire the <u>Property</u> may be treated as a qualifying distribution by you is <u>p</u>.

<u>Issue 2</u>:

Since the Property is being used, or held for use, directly in carrying out your exempt purpose, its fair market value will be excluded from the determination of your minimum investment return pursuant to section 4942(e)(1) of the Code.

Issue 3:

Example 1 of section 53.4942(a)-3(a)(8) of the Regulations provides that reasonable overhead attributable to activities in furtherance of an exempt purpose is an example of reasonable administrative expenses paid to accomplish section 170(c)(1) or (2)(B) purposes under section 4942(g)(1) of the Code. Under this logic, since the Property is being used, or held for use, directly in carrying out your exempt purpose, reasonable operational and maintenance expenses attributable to the Property are administrative expenses paid to accomplish section 170(c)(1) or (2)(B) purposes under section 4942(g)(1) of the Code.

In view of the foregoing, we rule as follows:

1. The fair market value of the Property is a qualifying distribution under section 4942(g)(1) of the Code and section 53.4942(a)-3(a)(5) of the Regulations in your fiscal year ending October 31, 2005.

2. The fair market value of the Property is excluded from the calculation of your minimum investment return pursuant to section 4942(e)(1) of the Code.

3. The expenses incurred in operating and maintaining the Property, to the extent reasonable and necessary, constitute qualifying distributions within the meaning of Section 4942(g)(1) of the Code.

These rulings are based on the understanding that there will be no material changes in the facts upon which it is based.

We express no opinion as to the tax consequences of the proposed transaction under any other section of the Code.

Pursuant to a Power of Attorney on file in this office, a copy of this letter is being sent to your authorized representatives. A copy of this letter should be kept in your permanent records.

These rulings are directed only to the organization that requested them. Section 6110(k)(3) of the Code provides that it may not be used or cited by others as precedent.

If there are any questions about this ruling, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

/s/

Theodore R. Lieber
Manager, Exempt Organizations
Technical Group 3

Enclosure
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