

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

Department of the Treasury

Number: **201919017**
Release Date: 5/10/2019

Employer Identification Number:

Contact Person - ID Number:

Contact Telephone Number:

Date: February 13, 2019

LEGEND

UIL:

B= State
C= Name
D= Continent
E= Name
F= Year
G= Year
H= Year

4942.03-07

x dollars= Amount
y dollars= Amount

Dear :

Why you are receiving this letter

This is our response to your December 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. Your purpose is to create and then operate C, which is a museum whose purpose is to inspire people to learn about D's culture and history. You are requesting the advance approval of a set-aside for x dollars for F for the completion of C. The estimated amount needed to complete

C's construction is approximately y dollars of which you have sufficient funding.

The planned facility for C consists of a free-standing multi-purpose structure that will fit into the architectural landscape of the city business district and the city arts district. The facility will house a permanent collection of pre-modern, modern, contemporary art and artifacts as well as provide space for rotating and traveling exhibitions and offer visitors immersive experiences using technology and kinetic exhibits. The facility will also enable you to host artistic performances, film, food, and cultural festivals, and public art demonstrations.

You anticipate the facility's predesign and design phases to be completed by G. Furthermore, you plan for the construction phase to be completed by H. Although you may be able to estimate the costs involved in the planning and construction of the facility for C, the actual costs are dependent upon the market prices of the highly cyclical and volatile construction industry. Consequently, disbursements of funds cannot be made in F and are expected to take place throughout the various phases.

In addition, you had acquired one piece of land for C; however, before beginning construction, you learned that the expansion of E may affect your original plans. You subsequently contacted the Project Manager for E's expansion to find out the impact it will have on your planned facility for C. At that time, the Project Manager indicated that E's expansion would not affect the development plans for C. You then acquired additional land in the vicinity of the first piece to ensure you would have sufficient space for both C's facility and for adequate parking. However, you then learned that E's expansion will significantly impact your development plans for C but have not been able to definitively learn the details.

The development and construction of C can be better accomplished by a set-aside for multiple reasons. These include the uncertain impact of E's expansion on C. Furthermore, the development and construction of C will require the use of multiple outside parties working in a sequential order tied to the various phases of the construction. Moreover, construction and land development projects by nature are typically uncertain in relation to their actual costs and completion time. You also need flexibility to fund the project because of the required coordination with various contractors. The set-aside will also allow you to provide oversight over the construction and enable you to make timely payments throughout the various phases of construction as well as make needed adjustments concerning the impact that the expansion of E has on the construction of C. Consequently, the added flexibility through the set-aside greatly increases the practicality of making payments to contractors, subcontractors, and others as well as making necessary adjustments concerning any impact the expansion of E has on the construction. You provided a statement that the latest possible date of the payment is no later than 60 months after the date of your set-aside.

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 considered 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 considered 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