



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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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Contact Person:

Uniform Issue List Numbers: 4942.03-06
170.01-00

Identification Number:

Telephone Number:

Legend

F =

G =

x =

Year 1 =

Year 2 =

Dear _____ :

This is in reply to your request for approval of a set-aside of x under the suitability test of section 4942(g)(2)(B)(i) of the Internal Revenue Code and section 53.4942(a)-3(b)(2) of the Foundation and Similar Excise Taxes Regulations.

You, F, are exempt from federal income tax under section 501(c)(3) of the Code, and are a private foundation under section 509(a) of the Code. You intend to meet the pass-through of all contributions received requirement of section 170(b)(1)(E)(ii). This set-aside is to be part of your meeting of that section 170(b)(1)(E)(ii).

You gave your formal consent in Year 1 to the transfer of specific land to a tax exempt church, G, which is exempt from federal income tax under section 501(c)(3) of the Code. The church grantee G delayed accepting legal title to the land until G completed, as of April 30 of Year 2, a review of the title and any liabilities or liens. You noted in your tax records, in February of Year 2, that the land should be set aside for the church until the title was accepted by the church. The church took title to the land on April 30 in Year 2.

You request Internal Revenue Service approval of this set-aside of land for the church in order to meet section 170(b)(1)(E)(ii) with respect to Year 1 which, under that section, includes an extension to March 15 of Year 2 .

Section 501(c)(3) of the Code provides for the exemption from federal income tax of nonprofit organizations organized and operated exclusively for charitable and/or the other exempt purposes stated in that section.

Section 509(a) of the Code describes organizations exempt from federal income tax under section 501(c)(3) of the Code that are private foundations subject to the private foundation

provisions of Chapter 42 of the Code.

Section 170(b)(1)(E)(ii) of the Code provides favorable income tax deductibility to private foundations that meet its requirement of making qualifying distributions (including set-asides) under section 4942(g) of the Code in an amount at least equal to the amount of contributions received during the year. That section provides that the time period for making qualifying distributions (including set-asides) under section 4942(g) of the Code extends to March 15 of the immediately following year in the case of a calendar year organization.

Section 4942 of the Code imposes 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 provides that, in general, a qualifying distribution is any amount, including reasonable and necessary administrative expenses, paid to accomplish, or to acquire an asset used directly in carrying on, one or more of the purposes described in section 170(c)(2)(B) of the Code, which includes charitable purposes.

Section 4942(g)(2)(A) of the Code provides that an amount of income that is set aside for a specific project within one or more purposes of section 170(c)(2)(B) of the Code may be treated as a qualifying distribution if the amount meets the set-aside requirements of section 4942(g)(2)(B) of the Code.

Section 4942(g)(2)(B) of the Code provides, in pertinent part, that 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 that the amount set aside will be paid for the specific project within five years and that the suitability test for a set-aside under section 4942(g)(2)(B)(i) of the Code 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 that 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 Foundation and Similar Excise Taxes Regulations provides that 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) of the Code are met. The requirements are met if the foundation establishes to the satisfaction of the Commissioner that 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 that its suitability test for a set-aside is met if the foundation establishes that the specific project is one in which relatively long-term grants or expenditures must be made. The regulation cites, as an example of a suitable project, a plan to erect a building to house the direct charitable, educational or similar exempt activities of the foundation, such as a museum building, even if the exact location and architectural plans have not been finalized.

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

You sought approval of your set-aside, as required by section 4942(g)(2)(B)(i) of the Code and section 53.4942(a)-3(b)(7)(i) of the regulations. Your set-aside was made before March 15 of Year 2 and thus was within the period allowed by section 170(b)(1)(E)(ii) of the Code. Your request for Internal Revenue Service approval of the set-aside was made before the end of that year, namely before December 31 of Year 2.

Your set-aside was made for religious and charitable purposes under section 170(c)(2)(B) of the Code, as required by section 4942(g)(2)(A) of the Code and section 53.4942(a)-3(b)(2) of the regulations.

Your set-aside was paid out within 60 months from the time when the first amount was set aside, as required by section 4942(g)(2)(B) of the Code and section 53.4942(a)-3(b)(1) of the regulations.

Your set-aside to enable transfer of title to land was better accomplished over several months, rather than by immediate payment, under the suitability test of section 4942(g)(2)(B)(i) of the Code and section 53.4942(a)-3(b)(2) of the regulations, because this set-aside provided adequate time for the church to satisfy itself over several months that the donated title had no unacceptable liabilities or liens.

Thus, your specific project of transferring title to x land to church G meets the requirements for a set-aside under the suitability test of section 4942(g)(2)(B)(i) of the Code and section 53.4942(a)-3(b)(2) of the regulations.

Accordingly, we rule that your set-aside is a qualifying distribution under section 4942(g)(2)(B)(i) of the Code and section 53.4942(a)-3(b)(2) of the regulations as of the time when the set-aside was made.

Section 53.4942(a)-3(b)(8) of the regulations provides that any set-aside approved by the Internal Revenue Service must be evidenced by the entry of a dollar amount in your books and records. Further, the amount of the set-aside must be taken into account in determining your minimum investment return (see section 53.4942(a)-2(c)(1) of the regulations), and any income attributable to a set-aside must be taken into account in computing your adjusted net income (see section 53.4942(a)-2(d) of the regulations).

Because this ruling letter could help to resolve any questions, please keep it in your permanent records, and include a copy in your annual return on Form 990-PF.

This ruling letter is directed only to the organization that requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Sincerely,

Jane Baniewicz
Manager, Exempt Organizations
Technical Group 2