



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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Number: **200525017**
Release Date: 6/24/2005
TEGE:EO

UIL Number: 4942.03-07

Date: 03/31/05

Contact Person:

Identification Number:

Telephone Number:

Employer Identification Number:

Legend:

A=

B=

xx=

yy=

Dear _____ :

We have considered your request dated December 31, 2003, that a proposed set-aside of \$xx be treated as a qualifying distribution within the meaning of section 4942(g)(2) of the Internal Revenue Code for the calendar year ending yy.

You have been recognized as exempt from federal income tax under section 501(c)(3) of the Code and has been classified as a private non-operating foundation within the meaning of section 509(a) of the Code.

You make charitable contributions to various section 501(c)(3) organizations, including hospitals in A. Specifically, you make charitable contributions to the B hospital in A.

Specifically, you fund the purchase of medical equipment for diagnosing patients and educating doctors dealing with lung diseases of children of the B hospital in A. You wish to set-aside \$xx for the purchase of specific medical equipment. Under the law in A, hospitals that receive foreign funds of equipment must receive permission from the government in A before funds or equipment can be sent to a hospital. It can take the hospital from one to six months to receive this permission from the A government. Until then, the hospital cannot use these funds or this equipment.

Accordingly, the Board of Directors of the Foundation by resolution has approved a set-aside of funds in the amount of \$xx. They have further authorized this request to the Internal Revenue Service for approval of the suitability of the set-aside and confirmation of its status as a qualifying distribution of the Foundation for the taxable year ending yy. A statement by your Board of Directors that the amount set-aside for the equipment as described above will actually be paid for this project within 60 months is included in this request.

Section 4942(a) of the Code imposes a tax on the undistributed income of a private foundation which has not been distributed before the first day of the second (or any succeeding) taxable year following such taxable year (if such day falls within the taxable period).

Section 4942(c) of the Code defines "undistributed income" as the amount by which the distributable amount for such taxable year exceeds qualifying distributions made before such time out of such distributable amount.

Section 4942(f) of the Code defines the term "distributable amount" as an amount equal to the sum of the minimum investment return (as adjusted) reduced by the sum of the taxes imposed on such private foundation under subtitle A and section 4940.

Section 4942(e), in substance and generally, defines minimum investment return for any private foundation for any taxable year as five percent of the aggregate fair market value of all assets of the foundation other than those which are used directly in carrying on the foundation's exempt purpose over any acquisition indebtedness with respect to such assets.

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

Section 4942(g)(2), in substance, provides that an amount set-aside for an approved purpose may be treated as a qualifying distribution.

The \$xx set-aside for the project listed above is being set aside for a specific project that accomplishes a charitable purpose under section 170(c)(2)(B) of the Code. The Service has previously determined that the Foundation has regularly provided significant support to various operating charities, including various hospitals. A set-aside will allow you to purchase specific medical equipment for medical treatment and education. The specific project listed above for which the set-aside is being made is designed to further and enhance these charitable activities. Accordingly, the suitability test of section 53.4942(a)-3(b)(2) of the regulations is satisfied.

The purchase described above can better be accomplished by a set-aside rather than by immediate payment of funds. This conclusion derives from the legal requirements under the law in A, which requires a waiting period before equipment or funds from a foreign country can be used by a charity in A.

Based on the foregoing, we rule that the set-aside of \$xx on your books and records, specifically devoted to the planned purchase of medical equipment for diagnosing patients and educating doctors dealing with lung diseases of children at the B hospital in A, meets the requirements of

section 4942(g)(2)(B)(i) of the Code and section 53.4942(a)-3(b)(2) of the regulations. Accordingly, the set-aside may be treated as a qualifying distribution for the Foundation's taxable year ending yy.

We direct the Foundation's attention to section 53.4942(a)-3(b)(8) of the regulations, entitled "Evidence of set-aside". This section provides that a set-aside approved by the Internal Revenue Service shall be evidenced by the entry of a dollar amount on the books and records of a private foundation as a pledge or obligation to be paid at a future date or dates. Further, any amount which is set aside shall be taken into account for purposes of determining the foundation's minimum investment return (see section 53.4942(a)-2(c)(1)), and any income attributable to such set-aside shall be taken into account in computing adjusted net income (see section 53.4942(a)-2(d)).

This ruling is based on the understanding that there will be no material changes in the facts upon which it is based. Any changes that may have a bearing upon the Foundation's tax status should be reported to the Ohio Tax Exempt and Government Entities (TE/GE) Customer Service Office, which deals with exempt organizations matters. The mailing address is: Internal Revenue Service, TE/GE Customer Service, P.O. Box 2508, Cincinnati, OH 45201.

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.

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

This ruling 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 by others as precedent.

Thank you for your cooperation.

Sincerely yours,

Debra J. Kawecki
Manager, Exempt Organizations
Technical Group 1

Enclosure
Notice 437