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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Date: AUG - 2 2004

Contact Person:

Uniform Issue List Number: 4942.03-07

Identification Number:

Telephone Number:

T:EO:BR2

Legend

H =

S =

Dear :

This is in reply to your request for a set-aside, S, to meet contingent liabilities and a court order, as allowable under section 53.4242(a)-3(b)(9) of the Foundation and Similar Excise Taxes Regulations. (This set-aside request is for your tax year ending June , whereas such a set-aside for your preceding tax year ended June was approved in PLR 200311040.)

H, having ceased being a hospital, is a private foundation under section 509(a) of the Code and, thus, is subject to section 4942(g) of the Code requiring, in general, a minimum annual distribution for exempt purposes.

However, H continues to remain subject to significant, contingent liabilities that arose prior to the asset sale ending its function as a hospital. Also, H is subject to an "18 plus one" rule under a state law, whereby all infants born at the then H hospital facility, prior its end, have until the age of 18 plus one year to file any medical malpractice claim against H.

Significantly, H remains under a state court order providing that, while pending claims and potential claims exist, none of H's assets may be expended, except for H's own ordinary and necessary operating expenses or in accord with that court's orders.

Section 4942(a) of the Code imposes tax on any private foundation that fails to distribute the required annual distribution for exempt purposes. In general, the distributable amount is distribution is equal to five percent of any noncharitable investment assets of the private foundation. Absent a set-aside approved by the Service for each tax year, the qualifying distribution for exempt purposes must be made before the first day of the second tax year following the tax year concerned.

Section 53.4942(a)-3(b)(9) of the Foundation and Similar Excise Taxes Regulations provides that if a private foundation is involved in litigation and may not distribute assets or income because of a court order, the private foundation may (except as provided in section 53.4942(a)-2(e)(1)(i) or (ii)) seek and obtain a set-aside for the purpose described in section 53.4942(a)-3(a)(2). The amount to be set-aside shall be equal to that portion of the private foundation's distributable amount which is attributable to the assets or income that are held pursuant to court order and which, but for the court order precluding the distribution of such assets or income, would have been distributed. In the event that the litigation encompasses more than one tax year, the private foundation may seek additional contingent set-asides. Such amounts must actually be distributed by the last day of the tax year following the tax year in which the litigation is terminated. Amounts not distributed by the close of the appropriate tax year shall be treated as described in section 53.4942(a)-2(d)(2)(iii)(c) for the succeeding tax year.

H's assets cannot be used to meet section 4942(g) of the Code except to the extent provided by the court order reserving such assets for H's possible, contingent liabilities. Such a court order is the type of situation allowing a set-aside under section 53.4942(a)-3(b)(9) of the regulations.

Accordingly, we rule that H can make a contingent set-aside for its tax year ending June

The amount to be set aside will be equal to the entire portion of H's current year distributable amount because no portion of H's assets, aside from its own operating expenses, may be distributed while the court order is pending. Based on H's estimate, the set-aside amount of five percent will be approximately S amount, but the exact amount of the set-aside can be determined upon H's final accounting for its tax year.

We direct your attention to section 53.4942(a)-3(b)(4) of the regulations, entitled "Evidence of set-aside". That 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 the private foundation as a pledge or obligation to be paid at a future date or dates.

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 as precedent.

Sincerely,



Joseph Chasin
Manager, Exempt Organizations
Technical Group 2