



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, P.N. 20224

Number: **200522015**

Release Date: 6/3/05

UIL: 4942.03-07

Date: 03/07/05

Contact Person:

Identification Number:

Telephone Number:

LEGEND:

M =

N =

X =

EIN:

Dear _____ :

We have considered your ruling request dated December 29, 2003, in which you requested approval of a proposed set-aside of M's income under the suitability test of section 4942(g)(2)(B)(i) of the Internal Revenue Code (the "Code") and section 53.4942(a)-3(b)(2) of the Foundation and Similar Excise Taxes Regulations (the "regulations"), and a determination that the amount set aside may be treated as a qualifying distribution in the year in which it is set aside (but not in the year in which actually paid).

M is recognized as exempt from federal income tax as a charitable organization under section 501(c)(3) of the Code, and is classified as a private foundation within the meaning of section 509(a).

M wishes to set aside a grant totaling \$x for foundation operations. M's purpose is to provide a two-day training program for improving driver skill, awareness, attention and confidence. The goal of M's program is to prevent injury and to save lives. M's courses include classroom training as well as hands on experience on an obstacle course. M observes how untrained drivers handle various road conditions and hazards,

provide training on handling hazards and provide actual experience of its classroom training.

M plans to offer its courses in N. M stated that it is having difficulty in accessing appropriate facilities. It stated that the facilities that it plans to use for hand on experience on an obstacle course have been booked since the beginning of 2003. M plans to have access to these facilities in 2004. M states that all of its purposes can not be accomplished by booking smaller facilities. M states that the set-aside funds will be used to hold classes in 2004 and will use the set aside funds by December 31, 2005.

Section 4942(a) of the Code imposes on the undistributed income of a private foundation for any taxable year, which has not been distributed before the first day of the second taxable year following such taxable year, a tax equal to 15 percent of the amount of such income remaining undistributed at the beginning of such second taxable year.

Section 4942(c) of the Code provides that, for purposes of section 4942, the term "undistributed income" means, with respect to any private foundation for any taxable year as of any time, the amount by which (1) the distributable amount for each taxable year, exceeds (2) the qualifying distributions made before such time out of such distributable amount.

Section 4942(g)(1) of the Code defines the term "qualifying distribution," in general, as any amount paid to accomplish one or more purposes described in section 170(c)(2)(B), or to acquire an asset used directly in carrying out one or more purposes described in section 170(c)(2)(B).

Section 4942(g)(2)(A) of the Code provides that an amount of income that is set aside for a specific project which comes within one or more purposes described in 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).

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) is met.

Section 4942(g)(2)(B)(i) of the Code provides a suitability test under 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 regulations provides that an amount set aside for

a specific project that is for one or more of the purposes described in section 170(c)(1) or (2)(B) of the Code may be treated as a qualifying distribution in the year in which set aside (but not in the year in which actually paid), if the requirements of section 4942(g)(2)(B)(i) of the Code are met, 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 has been 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 the suitability test is satisfied if the private foundation establishes to the satisfaction of the Commissioner that the specific project for which the amount is set aside is one that can be better accomplished by a set-aside than by the immediate payment of funds. Specific projects that can be better accomplished by the use of a set-aside include, but are not limited to, projects in which relatively long-term grants or expenditures must be made in order to assure the continuity of particular charitable projects or program-related investments (as defined in section 4944(c)) or where grants are made as part of a matching-grant program. Such projects include, for example, a plan to erect a building to house the direct charitable, educational, or other similar exempt activity of the private foundation, even though the exact location and architectural plans have not been finalized.

Section 53.4942(a)-3(b)(7)(i) of the regulations provides that if an amount is 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, the private foundation must apply for the Commissioner's approval of the set-aside before the end of the taxable year in which the amount is set aside.

M has timely sought approval of its set-aside of income in advance of the time when the amounts of income are to be 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. M's set-aside of \$x will be for a specific project within the charitable purposes of 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. M represents that the amount set aside for its classroom and obstacle training will be paid out within 60 months from the time it is set aside as required by section 4942(g)(2)(B) of the Code and section 53.4942(a)-3(b)(1) of the regulations. M's specific project, i.e., classroom and obstacle training, is better accomplished by this set-aside of income, rather than by immediate payment, because it involves the unavailability of suitable facilities as described in section 53.4942(a)-3(b)(2) of the regulations. Thus, M's classroom and obstacle training project meets the requirements for a set-aside of income 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 up to \$x of M's income to be set aside for the classroom and obstacle training will be treated as a qualifying distribution under section 4942(g) of the Code and section 53.4942(a)-3 of the regulations in the tax year when such amount

is set aside.

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 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 must be taken into account in determining the private foundation's minimum investment return under 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 adjusted net income under section 53.4942(a)-2(d) of the regulations.

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

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

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.

Sincerely,

Jane Baniewicz
Manager, Exempt Organizations
Technical Group 2