



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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Number: **200621030**
Release Date: 5/26/06
Date: March 1, 2006

Contact Person:

Identification Number:

Telephone Number:

UIL: 4942.03-07

Employer Identification Number:

Legend:

A =
B =
C =
D =
E =
F =
X =

:

In January 1998, A Foundation ("the Foundation"), a private operating foundation exempt under Section 501(c)(3), acquired B Property adjacent to other property owned by the Foundation. This Property is known as D. D is a research and reference library used in furtherance of the Foundation's exempt purposes. The B Property had on it one-story remains of a building, and was used until 2005 for parking to service D and E.

The Board of Directors of the Foundation previously approved construction of a building on the B Property in furtherance of the Foundation's exempt purposes. The building will be used to store the Foundation's collection of research materials and historic objects, meeting rooms suitable for lectures and seminars, and office space for staff. The Foundation has previously obtained Service approval for a set-aside relating to the construction of this building.

In the spring of 2005 the Foundation entered into a contract with a construction firm, and construction on the B Property began in June of 2005. All monies set aside pursuant to the previous request were expended on this project prior to March 31, 2005, and additional amounts were expended for work occurring before August 29, 2005. In early 2005 it was anticipated that the construction on the B Property would be 80 percent complete by the Foundation's year end March 31, .

The Foundation proposes to set aside up to x for its fiscal year ending March 31, . The earlier set aside was approved by the Service and fully expended by the Foundation on this project prior to March 31, . Further set asides and expenditures may be required to complete this multi-year project if construction continues at its present pace.

On August 29, 2005, Hurricane Katrina ravished the Gulf Coast area where the Foundation is located. Hurricane Katrina caused construction to stop on the B Property. The Foundation has authorized the construction company to resume construction, but to date construction has resumed only at a very slow pace as a result of delays due to Hurricane Katrina. Thus, it is currently anticipated that the construction on the B Property will not be 80 percent complete by the Foundation's year end March 31, as previously anticipated.

The B Property is located the F district, subject to regulation with respect to building design, among other things. The construction will be of a five-story building on the B Property. Based on previous construction, renovation and restoration, the Foundation estimates the total cost of the project at x . The amounts set aside for the specific project will be paid within 60 months after the date of the set-aside.

RULINGS REQUESTED:

That the set-aside of x , specifically devoted to the construction of the above described facility, meets the requirements of section 4942(g)(B)(i) of the Internal Revenue Code and section 53.4942(a)-3(b)(2) of the regulations, so that the set-aside can be treated as a qualifying distribution expended directly for the active conduct of exempt activities for the Foundation's taxable year ending March 31, .

LAW:

Section 4942(g)(1) of the Code defines a "qualifying distribution" as (a) any amount paid to accomplish one or more purposes described in section 170(c)(2)(B), other than any contribution to (i) an organization controlled by the foundation or one or more disqualified persons or (ii) a private foundation which is not an operating foundation, except as otherwise provided; or (b) any amount paid 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 for all taxable years beginning on or after January 1, 1975, an amount set-aside for a specific project which comes within one or more purposes described in section 170(c)(2)(B) may be treated as a qualifying distribution if it meets the requirements of subparagraph (B) of section 4942(g)(2).

Section 4942(g)(2)(B)(i) of the Code provides 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 foundation establishes to the satisfaction of the Secretary that the amount will be paid for the specific project within five years, and the project is one which can be better accomplished by such set-aside rather than by immediate payment of funds (the "suitability test").

Section 53.4942(a)-3(b)(1) of the Foundation and Similar Excise Taxes 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) 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) and this paragraph are satisfied. The requirements of this paragraph (b) are satisfied if the private 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 (i) the set-aside satisfies the suitability test, or (ii) the foundation satisfies the cash distribution test.

Section 53.4942(a)-3(b)(2) of the regulations provides that the suitability test is satisfied if the foundation establishes that the specific project is one 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, for example, a plan to erect a building to house a direct charitable, educational, or similar exempt activity of the foundation.

Section 53.4942(b)-1(b) of the regulations provides, in part, that any amount set-aside by a foundation for a specific project, such as the acquisition, restoration, or construction of additional buildings or facilities which are to be used by the foundation directly for the active conduct of the foundation's exempt facilities, shall be deemed to be a qualifying distribution expended directly for the active conduct of the foundation's exempt facilities if such amount has initially been shown to meet the set-aside requirements in section 53.4942(a)-3(b) of the regulations.

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. 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.

ANALYSIS:

You have stated that your proposed set-aside will accomplish a purpose described in section 170 of the Code, specifically, constructing a building to store the Foundation's

collection of research materials and historic objects, meeting rooms suitable for lectures and seminars, and office space for staff. The amount set-aside will be used to construct a facility in which to provide these activities.

The amount you will set aside will be used to construct a building which will be used in your operations in furtherance of exempt purposes described in section 170(c)(2)(b). Also, the amounts set aside will be distributed within a 5-year period. Therefore, we find that your proposed set-aside meets the requirements of section 4942(g)(2)(B) of the Code and section 53.49423(a)-3(b)(2) of the regulations.

The set-aside should satisfy the suitability test because the expenditures are used for the design and construction of the building, and could not be made in the taxable year ending March 31, _____, as required under section 53.4942(a)-3(b)(2) of the regulations. Further, you have established to our satisfaction that the project is long-term in nature and is better accomplished by future expenditures than by current ones.

RULING:

Based on the foregoing, we rule that the set-aside of _____ x, specifically devoted to the construction of the above described facility, meets the requirements of section 4942(g)(B)(i) of the Code and section 53.4942(a)-3(b)(2) of the regulations. Accordingly, the set-aside can be treated as a qualifying distribution expended directly for the active conduct of exempt activities for your taxable year ending March 31, _____.

We direct your attention to section 53.4942(a)-3(b)(4) 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. 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 as a pledge or obligation to be paid at a future date or dates. 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).

This ruling is conditioned on the understanding that there will be no material changes in the facts upon which it is based.

Please keep a copy of this ruling in your organization's permanent records.

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.

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.

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,

Andrew F Megosh Jr.
Manager, Exempt Organizations
Technical Group 2

Enclosure:

Notice 437