



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

TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

NUMBER: **200628037**

RELEASE: 7/14/06

Date: April 19, 2006

Contact Person:

Identification Number:

Telephone Number:

UIL: 4942.03-07

Employer Identification Number:

Legend:

A =

x =

y =

z =

aa =

gg =

hh =

ii =

kk =

Dear \_\_\_\_\_ :

This letter is in response to your request seeking approval of a set-aside under section 4942(g)(2) of the Internal Revenue Code.

Facts

Previously, the Internal Revenue Service issued a determination letter recognizing A as an organization described in section 501(c)(3) of the Code and as a private foundation under section 509(a).

A plans on constructing and maintaining a website offering a multi-media courseware library on the internet to the public for free (the "Project"). These courses will cover a wide variety of subjects, (including math, science, English, etc.) and a wide range of grades (kindergarten through college).

Because the Project can better be accomplished by setting aside funding now rather than by paying it currently, A proposes to set aside \$gg in the tax year ended x to be used for the start-

up phase of the Project. The start-up phase will be completed by aa, and the total cost is currently estimated to exceed the amount set aside. The funds to be set aside will be paid out as work is completed and invoices are submitted, reviewed and approved. In all events, however, the set-aside amount will be completely paid out no later than aa.

It is anticipated that additional amounts will not be to be added to the proposed set aside. A's sole Trustee has approved this set-aside.

The start-up phase of the Project consists of four major steps:

1. Recruiting staff and acquiring office space.
2. Developing software and website, and acquiring servers and other required equipment.
3. Recruiting educators and consultants; developing educational materials.
4. Marketing the website.

#### Ruling Requested

A set-aside of \$gg in the tax year ended x satisfies the suitability test of section 4942(g)(2)(B)(i) of the Code and section 53.4942(a)-(3)(b)(2) of the regulations, and, therefore, \$hh will be treated as a qualifying distribution in the tax year ended x, \$ii will be treated as a qualifying distribution in the tax year ended y, and \$kk will be treated as a qualifying distribution in the tax year ended z.

#### Law

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) 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) 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) provides that an amount set-aside for an approved purpose may be treated as a qualifying distribution.

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 private 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)(2) of the Foundation and Similar Excise Tax regulations provides that the suitability test is satisfied if the private foundation establishes that the specific project for which the amount is set aside is one that can be better accomplished by the set aside than by the immediate payment of funds.

#### Analysis

A is an organization described in section 501(c)(3) of the Code and is a private foundation described in section 509(a) of the Code. A is setting aside \$gg for the start-up phase of a specific project. The start-up phase will occur over several years and is expected to be completed by aa.

The Project will accomplish A's charitable purpose under section 170(c)(2)(B) of the Code. The amount set aside will enable A to spend the funds necessary to pay for the various expenses related to the start-up phase of the Project, which will occur over several years and will be completed within five years. Thus, the start-up phase of the Project, for which \$gg is being set aside, is one that can be better accomplished by the set aside, than by the immediate payment of funds.

Accordingly, A satisfies the suitability test in section 4942(g)(2)(B)(i) of the Code and in section 53.4942(a)-3(b)(2) of the regulations.

#### Ruling

A set-aside of \$gg in the tax year ended x satisfies the suitability test of section 4942(g)(2)(B)(i) of the Code and section 53.4942(a)-(3)(b)(2) of the regulations, and, therefore, \$hh will be treated as a qualifying distribution in the tax year ended x, \$ii will be treated as a qualifying distribution in the tax year ended y, and \$kk will be treated as a qualifying distribution in the tax year ended z.

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

This ruling does not address the applicability of any section of the Code or regulations to the facts submitted other than with respect to the sections described.

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

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.

In accordance with the Power of Attorney currently on file with the Internal Revenue Service, we are sending a copy of this letter to your authorized representative.

Sincerely,

Steven B. Grodnitzky  
Acting Manager  
Exempt Organizations  
Technical Group 1

Enclosure  
Notice 437