



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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Number: **200634037**
Release Date: 8/25/2006
April 10, 2006

Contact Person:

Identification Number:

Telephone Number:

4942.03-07

Employer Identification Number:

Legend:

A =

B =

C =

X =

Y =

Z =

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By letter dated April 11, 2005, supplemented by letter dated March 29, 2006, A requests a ruling regarding approval of proposed set-aside of funds in the amount of \$5x for the taxable year ending June 30, 2005 and an additional \$5x for the taxable year ending June 30, 2006.

A is a charitable trust established under B law, which has been recognized as a tax-exempt organization under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, and classified as a private operating foundation under Section 4942(j)(3). In furtherance of its tax-exempt purposes, A makes qualifying distributions, as described in Section 4942(g), directly for the active conduct of various programmatic activities relating to its educational purposes. The current programmatic activities focus on meeting the following objectives:

- a. Improving the understanding of, appreciation for, engagement in, and functioning of democratic institutions (the legislative, judicial, and executive branches of government, public schools, and the press);
- b. Improving the understanding, prevention, and treatment of adolescent mental health and disorders; and
- c. Accomplishing these objectives through programming, publications, and educational retreats.

A currently concentrates its work in the following specific areas: (a) educating scholars, the public, and high school students about the history, current state, and future challenges of the executive, legislative, and judicial branches, and about the press and the public schools; (b) convening high level conferences for individuals responsible for the well-being of these democratic institutions; (c) understanding the origins, paths, prevention, and treatment of adolescent mood disorders, schizophrenia, anxiety disorders, eating disorders, alcohol and drug abuse, and suicide; (d) understanding how adolescent mental health disorders can be prevented, their recurrence reduced, and their effects blunted; and (e) developing effective means to communicate these insights to adolescents in need, their families, counselors, teachers, physicians, and friends.

It is anticipated that A will acquire ownership of approximately y acres of real property commonly known as C. A currently owns a future interest in the trust which owns all y acres of real estate comprising C; trustor's wife owns an income interest in the trust for her lifetime. Upon the death of trustor's wife, A will acquire ownership of all y acres of real estate comprising C

Both A and trustor's wife desire for A to immediately acquire ownership of an approximately z acre parcel of real estate, comprising part of the approximately y acres of C real estate, on which an educational and conference facility will be constructed. In order to accomplish the immediate transfer of the z acres to A, following the submission of this ruling request, trustor's wife intends to file a petition with the local probate court, requesting the court to issue an order that will effectuate the division of the trust into two separate successor trusts, one of which will own the z acres of real estate. Upon the division of the trust, trustor's wife will disclaim her income interest in the successor trust holding the z acres, upon which A will then become the owner of the z acres. It is anticipated that construction of the facility will begin during the calendar year _____.

The nature and purpose of the specific project is the construction of a facility to be used directly for the active conduct of A's educational purposes. The amount of the set-aside for which approval is being requested is \$10x, \$5x for the taxable year ending June 30, _____, and \$5x for the taxable year ending June 30, _____. The purpose of the set asides is to fund, in part, the construction of the facility, which is anticipated to begin during the calendar year _____ and which is anticipated to be completed by June _____. The construction of the facility is better accomplished by set-asides totaling \$10x rather than the immediate payment of such funds because current spending for the construction

of the facility is not possible. A is not expected to acquire ownership of the land on which the facility will be constructed until December . A is still in the process of planning the design and construction of the facility, including having the architectural plans for the project completed. Many permits and approvals are required to be obtained prior to the construction of the facility, and it is anticipated that the construction of the facility will not begin until the calendar year and will not be completed until June .

. Thus, the activities involved in the construction of the facility, including design, permit and approval process, construction and furnishing, in planning, designing and constructing the facility will take place over a period that spans several years. Moreover, as is customary and appropriate in the construction of a building facility, payments will be made by A on an "as work is done" basis, which will promote the proper and timely completion of the facility. It is anticipated that significant expenditures for the construction of the facility will not begin to be made by A until the calendar year . Given the foregoing, the funding of the construction can be better accomplished by the requested set-asides than the immediate payment of funds.

The Visitor and Conference Center ("Center") will be a one-story building with approximately 5,000 – 10,000 square feet. Within the Center will be a multi-function conference room, which will also serve as a theatre, capable of holding approximately 40 people. The Center will be used as a facility in which various programmatic activities will be conducted. Therefore, certain programs currently operated under A's current projects will be conducted at the Center. In addition, the Center will serve as a conference center for leading national and international leaders to discuss nonpartisan issues that affect the public good. The Center will also provide programs to educate members of the public visiting the Center. The focus of the information will be the educational significance of C, including ecology, architecture, art and history. A brochure will be provided to each visitor to the Center and the various books produced by A will be offered for sale at the Center. Information about the ongoing programmatic educational activities being conducted by the C Trust will also be provided at the Center. The Center will also be the starting point for all tours conducted on C, once the entire C property is obtained by A

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.

Analysis:

The proposed set-asides will be used to accomplish purposes described in Section 170(c)(2)(B), as the set-asides will construct a facility which will be used directly for the active conduct of the educational activities constituting A's exempt purposes. As further described above, the set-asides satisfy the suitability test given the long-term nature and extent of the project and the fact that significant expenditures to construct the facility are not anticipated to be made by A until the calendar year . Further, the \$10x set-aside amounts will actually be paid for the facility project within 60 months after the date of the first set-aside. Accordingly, the \$10x in set-asides meet the requirements of Section 4942(g)(2)(B) of the Internal Revenue Code and Section 53.4942(a)-3(b)(2) of the regulations and, accordingly, constitute qualifying distributions under Section 4942(g). Further, because the facility will be used for the active conduct of the educational activities of A, the set-asides constitute qualifying distributions directly for the active conduct of the A's exempt purposes within the meaning of Section 4942(j)(3)(A).

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).

Rulings:

1. The proposed \$10~~x~~ in set-asides, specifically devoted to the construction of the facility, consisting of a \$5~~x~~ initial set-aside for the taxable year ending June 30, and a \$5~~x~~ addition to the initial set-aside for the taxable year ending June 30, , meet the requirements of Section 4942(g)(2)(B) and, accordingly, constitute qualifying distributions under Section 4942(g).
2. The above described set asides are qualifying distributions under Section 4942(g) and constitute qualifying distributions directly for the active conduct of the Taxpayer's exempt purposes within the meaning of Section 4942(j)(3)(A).

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.

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,
/s/
Debra J. Kawecki
Manager, Exempt Organizations
Technical Group 2

Enclosure: Notice 437