



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

Number: **200512022**  
Release Date: 3/25/2005  
SE:T:EO:RA:T:4

Date: 01/07/05

Contact Person:

Uniform Issue List

4942.03-07  
4942.03-05

Identification Number:

Telephone Number:

Employer Identification Number:

Legend:

B =  
C =  
D =  
M =  
N =  
O =

x =

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

We have considered M's ruling request as supplemented, submitted on M's behalf by its authorized representative. M requests approval of a proposed set-aside of funds, to be treated as qualifying distributions under section 4942(g)(2) of the Internal Revenue Code, for its taxable years ending \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_.

FACTS:

B formed M, a trust, in \_\_\_\_\_. In a determination letter issued in \_\_\_\_\_, the Internal Revenue Service recognized M as exempt from federal income tax under section 501(c)(3) of the Code. The Service further determined that M is a private \_\_\_\_\_.

foundation under section 509(a).

M was formed in memory of B's husband, C, a well known O writer who wrote many novels about N. A primary purpose of M is to provide a periodic (but not annual) prize to an individual or individuals for "practical accomplishments in the field of commercial N activities." During his lifetime, C wrote about what he conceived N would be like in the future. By providing a prize to a scientist or other individual for such N activities, M will contribute to the realization of what was only O in the C novels.

Your submission cites Article Fourth of the Trust Agreement, which authorizes a cash award to an individual(s) for "practical accomplishments in this field of commercial N activities, and for such other charitable purposes... as the Trustees will from time to time... determine. The Trustees may make payments or distributions from income and principal, or both."

Article Fourth also provides that the prize will be announced on the birthday of C, "but the prize need not be given each year. The prize recipient or recipients shall be recommended to the Trustees by a three (3) person Board appointed by the Trustees... consisting of one (1) member from the Americas, one (1) member from Asia, and one (1) member from Europe. Each Board member shall have an area of expertise in literature, N commercialization or N technology."

B died in \_\_\_\_\_, at which time virtually all of the assets accumulated by B and C were bequeathed to M. Prior to her death, the corpus of M consisted of a \$ \_\_\_\_\_ personal check from B held and not cashed by the Trustee. Between \_\_\_\_\_, when M was formed, and the time of her death, B spoke frequently with D, one of the Trustees. She stressed that the prize to be given by M was only to be awarded for a substantial accomplishment. Moreover, she wanted the prize to be a large sum of money so the N commercialization activity would be strongly encouraged.

You request a set-aside in the amount of \$ \_\_\_\_\_ x for each of the three ( ) tax years of \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_. You represent that this shall be a one-time only ruling request. Thereafter, it is anticipated that the source of your funding for the program constituting your exempt purpose, more specifically the granting of substantial monetary awards to individuals for their practical accomplishments in the field of commercial N activity, will be your anticipated earnings from royalties, investments, and other income in compliance with section 4942 of the Code.

You represent that the set aside will enable the Trustees to accomplish the purposes of M in two respects:

(1) Presently, there is no known practical accomplishment in the field of commercial N activities that would warrant a prize during the calendar year \_\_\_\_\_. This

is the very situation contemplated by B, who specified in the trust instrument that the prize “need not be given each year.”

(2) B also contemplated that at such a time as the prize is awarded, it would be a substantial prize. In order for the Trustees to fulfill the other charitable purposes of M, and to award a substantial prize out of M’s income, it will be necessary to accumulate income from M for approximately three (3) years. The Trustees wish to perpetuate M and therefore do not plan to make distributions of principal because that would deplete M’s assets.

The Trustees plan to make additions to the set-aside in calendar years \_\_\_\_\_ and \_\_\_\_\_ in approximately the same amounts as in \_\_\_\_\_. The actual amount set aside will depend on the actual income of M and the amounts of distributions made in furtherance of M’s other charitable purposes.

You have submitted a statement from Trustee D that the amounts to be set aside will be paid out no later than \_\_\_\_\_.

RULING REQUESTED:

M requests a ruling approving the set-aside of \$ \_\_\_\_\_ x in its taxable years ending on \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_. Specifically, M requests a ruling that the set-asides satisfy the suitability test of section 4942(g)(2)(B)(i) of the Code and Section 53.4942(a)-3(b)(2) of the regulations. Therefore, they will be treated as qualifying distributions in M’s taxable years \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_.

LAW:

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 (or any succeeding) taxable year following such taxable year (if such first day falls within the taxable period), a tax equal to 15 percent of the amount of such income remaining undistributed at the beginning of such second (or succeeding) taxable year. Section 4942(c) defines the term “undistributed income” as the amount by which the distributable amount for such taxable year exceeds the qualifying distributions made before such time out of such distributable amount.

Section 4942(d)(1) of the Code provides that the term “distributable amount” means, with respect to any foundation for any taxable year, an amount equal to (1) the sum of the minimum investment return plus the amounts described in subsection (f)(2)(c), reduced by (2) the sum of the taxes imposed on such private foundation for the taxable year under subtitle A and section 4940.

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)(B) of the Code may be treated as a qualifying distribution in the year in which set aside if the requirements of that section and section 4942(g)(2) are satisfied. The foundation must establish that the amount set aside will be paid for the specific project within 60 months after it is set aside, and (1) the set-aside satisfies the suitability test, or (2) 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.

ANALYSIS :

The proposed set-asides for M's taxable years ending \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_, are in furtherance of M's charitable purposes. There is no known practical accomplishment in the field of N commercialization activities that would warrant the award of a prize in \_\_\_\_\_. The Trust instrument specifies that the prize "need not be given each year." Further, the set-aside of funds in \_\_\_\_\_ will result in a larger prize when it is eventually awarded; in this context, a Trust objective is to award a "substantial prize." The size of the prize is an incentive for talented individuals to attempt to make a significant contribution to the very specialized field of N commercialization. Thus, M has established to our satisfaction, under the unique circumstances herein, that the project outlined above can be better

accomplished by such set-asides rather than by the immediate payment of funds. M has assured us that the funds to be set aside in its taxable years ending \_\_\_\_\_, and \_\_\_\_\_, will actually be paid prior to the expiration of 60 months from the dates of the set-asides.

RULING:

Based on the foregoing, we rule that the set-asides of 300x dollars on M's books and records for its taxable years ending \_\_\_\_\_, and \_\_\_\_\_, satisfy the requirements of section 4942(g)(2)(B)(i) of the Code and section 53.4942(a)-3(b)(2) of the regulations (the "suitability test"). Accordingly, the proposed set-asides may be treated as qualifying distributions for M's taxable years ending \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_.

We direct your attention to section 53.4942(a)-3(b)(8) 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. Further, any amount which is set aside shall be taken into account for purposes of determining the foundation's minimum investment return (see section 53.4942(a)-2(c)(1)), and any income attributable to such set-aside shall be taken into account in computing adjusted net income (see section 53.4942(a)-2(d)).

This ruling supersedes the ruling letter issued to M and dated December 29, 2004. The present ruling is based on the understanding that there will be no material changes in the facts upon which it is based, and that this will be a one-time request. Any changes that may have a bearing upon M's tax status should be reported to the Ohio Tax Exempt and Government Entities (TE/GE) Customer Service Office, which deals with exempt organizations matters. The mailing address is: Internal Revenue Service, TE/GE Customer Service, P.O. Box 2508, Cincinnati, OH 45201. The telephone number there is 877-829-5500 (a toll free number).

Pursuant to a Power of Attorney on file in this office, we are sending a copy of this letter to your authorized representative.

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.

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.

Thank you for your cooperation.

Sincerely,

Debra J. Kawecki  
Manager, Exempt Organizations  
Technical Group 4

Enclosure  
Notice 437