



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

Number: **200512026**
Release Date: 3/25/2005
TEGE:T1

Date: 12/27/04

Contact Person:

UIL: 501.00-00

Identification Number:

Telephone Number:

Employer Identification Number:

Legend

G =

H =

X =

Dear _____ :

We have considered your ruling request dated December 5, 2003, requesting approval of a set-aside of your income under the suitability test of section 4942(g)(2)(B)(i) of the Internal Revenue Code and section 53.4942(a)-3(b)(2) of the Foundation and Similar Excise Taxes Regulations, beginning on you tax year

You, G, are exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code (the Code) and are a private foundation under section 509(a) of the Code. You propose to set aside x dollars of your income pursuant to section 4942(g)(2)(B)(i) of the Code. Your specific project for the income is to renovate H, which is an organization exempt from federal income tax under section 501(c)(3) of the Code. You represent that all of the amounts to be set aside for this specific project will be paid out for this project within 60 months from the time when your first amount of income is set aside. You further state that the cost of the project can better be accomplished by the use of a set-aside of your income, rather than by immediate

payment of your funds, because the project requires an amount more than your annual distributable income under section 4942 of the code and because it will be paid later when, and as, the church is being renovated.

Section 501(c)(3) of the Code provides for the exemption from federal income tax of organizations organized and operated exclusively for religious, charitable, scientific, or educational purposes, provided no part of the organization's net income inures to the benefit of any private shareholder or individual.

Section 509(a) of the Code describes organizations exempt from federal income tax under section 501(c)(3) of the Code that are private foundations subject to the private foundation provisions of Chapter 42 of the Code.

Section 4942 of the Code imposes an excise tax on any private foundation that does not expend qualifying distributions for exempt purposes at least equal to its distributable amount for its tax year.

Section 4942(g)(1) of the Code provides that, in general, a qualifying distribution is any amount, including reasonable and necessary administrative expenses, paid to accomplish, or to acquire an asset used directly in carrying on, one or more of the purposes described in section 170(c)(2)(B) of the Code, which includes charitable purposes.

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) of the Code.

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 for 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 the set-aside under section 4942(g)(2)(B)(i) of the Code is met.

Section 4942(g)(2)(B)(i) of the Code provides a suitability test in 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 be better accomplished by the set-aside of income rather than by the immediate payment of funds.

Section 53.4942(a)-3(b)(1) of the Foundation and Similar Excise Taxes Regulations (the regulations) provides that the amounts of income set aside for a specific project for one or more of the purposes described in sections 170(c)(1) of 170(c)(2)(B) of the Code may be treated as qualifying distributions for the tax year(s) in which such amounts are set aside, but not in the tax year in which actually paid, if the

requirements of section 4942(g)(2)(B)(i) of the Code are met. The requirements are met if the foundation establishes to the satisfaction of the Commissioner that the amount set aside will be paid within 60 months after it is 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 its suitability test for a set-aside is met if the foundation establishes that the specific project is one in which relatively long-term grants or expenditures must be met. The regulation cites, as an example of a suitable project, a plan to erect a building to house the direct charitable, educational or similar exempt activities of the foundation, such as a museum building, even if the exact location and architectural plans have not been finalized.

Section 53.4942(a)-3(b)(7)(i) of the regulations provides that a private foundation must obtain Internal Revenue Service approval of its set-aside of income under the suitability test by applying before the end of the tax year in which the amount is set aside.

You have timely sought approval of your 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.

You represent that your amounts of income to be set aside for this specific project will be paid out for this project within 60 months from the time when the first amount 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.

Your project is better accomplished by this set-aside of income, rather than by immediate payment, 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 because this set-aside will provide adequate time for the grant funds to be earned by you and paid out when, and as, the renovation of the church is underway.

Thus, your specific project of a grant for this church's renovation 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 your set-aside of x dollars of your income for this church renovation for H will be a qualified distribution under section 4942(g)(2)(B)(i) of the Code and section 53.4942(a)-3(b)(2) of the regulations for the tax years ending through _____, when such amounts of income are set aside.

Section 53.4942(a)-3(b)(3) of the regulations provides that any set-aside approval 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).

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

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

Sincerely,

Michael Seto
Manager, Exempt Organizations
Technical Group 1