Uniform Issue List
4942.03-05
4942.03-07

200016026

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

Date: JAN 20 2000

OP:E:EO:T4

Contact Person:

ID Number:

Telephone Number:

Employer Identification Number:

Legend

M =
N =

x =

Dear Applicant:

This is in response to the ruling request contained in your letter dated December 29, 1999, wherein you requested approval for a set-aside, as described below, pursuant to 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. You are exempt from federal income tax under section 501(c)(3) of the Code and you have also been classified as a private foundation under section 509(a) pursuant to a determination letter issued in July, 1995.

You request a set-aside in the amount of slightly over 29.6x dollars for your taxable year ending December 31, 1998. Earlier, in a letter dated April 6, 1999, we approved a set-aside of 21.6x dollars for the 1997 calendar year for the same project, as described below. We noted in our letter that, "you anticipate that you will request an addition to the set-aside for 1998 in the amount of approximately 30x dollars." In your present letter, you state that, "There have been no material changes to the project since the date of our initial request and we hereby incorporate by reference the statements made in our initial request."

The specific project to be undertaken by you consists of the construction of Phase I of a golf practice facility at M in N. M is one of a number of high schools in the public school system of N. The enrollment at M is predominantly minority students who come from a lower socioeconomic background. The primary objective of the project is to expose these students to the game of golf through the construction of a golf practice facility.

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The main reason that you are requesting a set-aside is that the income generated by you in any one year is insufficient to fund the construction of Phase I of the golf practice facility. The construction of this facility has been divided into Phases I through IV. You, with the advice of consultants, have determined that Phase I "cannot be logically or efficiently further subdivided."

The project will be undertaken as follows: Phase I - construction of a practice tee; Phase II - construction of an additional practice tee and target greens; Phase III - construction of a pitching green, bunkers, pro-shop, bridge and cart path; Phase IV - construction of a putting green and additional cart path. The N public schools currently own land adjacent to M which is sufficient for the construction of Phases I-IV of the project. In your previous request, you attached exhibits showing drawings of the project and a detailed cost estimate.

You do not anticipate that the 1997 set-aside, the 1998 addition to the set-aside, and the required distributable amounts for 1999 and 2000 will be sufficient to fund Phase I of the project. Accordingly, you plan to actively seek contributions from other foundations in order to have adequate funds to begin construction of Phase I in the fall of 2000.

In your ruling request, you have assured us that the amounts to be set aside will actually be paid for the specific project no later than 60 months after the date of the first set-aside.

Section 4942(a) of the Code imposes an excise tax on the undistributed income of a private foundation. Section 4942(c) provides, in part, that the term "undistributed income" means, with respect to any private foundation for any taxable year, 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(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 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 this paragraph and section 4943(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 (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. The regulation cites as one example of a suitable project a plan to erect a building to house the direct charitable, educational, or similar exempt activity of the foundation (such as a museum building in which paintings are to be hung), even though the exact location and architectural plans have not been finalized.

You have submitted evidence that your proposed set-aside will be used to accomplish a purpose described in section 170(c)(2)(B) of the Code, specifically the construction of a golf practice facility adjacent to a public high school which mostly serves poor and minority students. Ordinarily, they would not have an opportunity to learn or play this sport because of their economic circumstances. The amount to be set aside will be used in Phase I of the project no later than 60 months from the date of the set-aside. The set-aside should satisfy the suitability test because the total expenditures will exceed your annual income, cannot be made in the taxable year in question, and will be used in order to assure the continuity of the particular charitable project, 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.

Based on the foregoing, we rule that the set-aside of slightly over 29.6x dollars on your books and records, specifically devoted to the construction of the above described golf practice facility, meets the requirements of section 4942(g)(2)(B)(i) of the Code and section 53.4942(a)-3(b)(2) of the regulations. Accordingly, the set-aside may be treated as a qualifying distribution for your taxable year ending December 31, 1998.

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 is based on the understanding that there will be no material changes in the facts upon which it is based. Any changes that may have a bearing upon your tax status should be reported to the Ohio Tax Exempt and Government Entities (TE/GE) Customer Service Office , which

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deals with exempt organizations matters. The mailing address is: Internal Revenue Service, TE/GE Customer Service, P.O. Box 2508, Cincinnati, Oh 45201.

We are sending a copy of this ruling to the Ohio TE/GE Office. Because this letter could help resolve any questions about your tax status, you should keep it with your permanent records.

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,

Gerald V. Sack

Gerald V. Sack
Manager, Exempt Organizations
Technical Group 4

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