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

200011069

Date: DEC 21 1999

Contact Person:

Significant Index Number: 4942.03-07

Contact Number:

OP:E:EO:T2

Legend
F =
P =
x =

Dear Applicant:

This is in reply to your rulings request of September 18, 1998, as modified by your letter of November 12, 1999, requesting approval of a proposed 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.

You, F, are exempt from federal income tax under section 501(c)(3) of the Code and are a private foundation under section 509(a) of the Code.

P is exempt from federal income tax under section 501(c)(3) of the Code and is not a private foundation under section 509(a) of the Code.

You propose to set aside amounts of up to "x" dollars of your income pursuant to section 4942(g)(2)(B)(i) of the Code to fund a matching-grant to P under section 53.4942(a)-3(b)(2) of the regulations.

You represent that all of the amounts to be set aside for this specific project of a matching-grant to P will be paid out for this project within 60 months from the time when your first amount of income is set aside. This set-aside will facilitate your funding of income for the matching-grant.

Section 501(c)(3) of the Code provides for the exemption from federal income tax of nonprofit organizations organized and operated exclusively for charitable and/or the other exempt purposes stated in that section.

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 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 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 within one or more purposes of 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 to 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 a 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 better be accomplished by the set-aside of income rather than by the immediate payment of funds.

Section 53.4942(a)-3(b)(1) of the regulations provides that the amounts of income set aside for a specific project for one or more of the purposes in section 170(c)(1) or 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 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 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 made. This regulation specifically allows, as an example of a suitable project, a set-aside of income by a foundation "where grants are made as part of a matching-grant program."

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.

Your set-aside for the matching-grant will be for a specific project within the charitable purposes of section 170(c)(2)(B) of the Code, as required by section 4942(g)(2)(A) of the Code and section 53.4942(a)-3(b)(2) 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 because, under the matching-grant provision of section 53.4942(a)-3(b)(2) of the regulations, this set-aside will allow continuous funding of your matching-grant for P as allowed by that regulation.

Thus, your specific project of providing a matching-grant to P 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 amounts of income of up to "x" dollars to be set aside for the matching-grant for P will be qualifying distributions under section 4942(g)(2)(B)(i) of the Code and section 53.4942(a)-3(b)(2) of the regulations in your tax year(s) when such amounts are set aside. As to your three specific requested rulings, we rule, as you have requested, that: (1) the amounts set aside in F's designated fund account for its matching-grant to P at the close of F's tax year ending December 31, 1999, will qualify as a set-aside under the suitability test of section 4942(g)(2)(B)(i) of the Code and section 53.4942(a)-3(b)(1) and (2) of the regulations; (2) the entire amounts set-aside will be qualifying distributions for all purposes of section 4942(g) of the Code; and (3) any interest or dividend income attributable to the matching-grant fund held by F can be set aside and will qualify as qualifying distributions in F's subsequent tax years within the 5-year period for this set-aside.

For your information, 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).

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, Form 990-PF.

This ruling letter 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.

Sincerely,

(signed) Garland A. Carter

Garland A. Carter
Manager, Exempt Organizations
Technical Group 2