FEB 28 2000

200022053

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

SIN 4942.03-07

No Third Party Contact

XXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXXX
XXXXXX
XXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXXXXXX

XXXXXXXXXXXXXXXX
XXXXXXXXXX
XXXXXXX

T:EO:RA:T:3

EIN: XXXXXXXXXXX

Legend:

A= XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX
x= XXXXXXXXXXX
y= XXXXXXXXX

Dear Applicant:

This is in reply to your letter of November 5, 1999, requesting a set-aside ruling under section 4942 of the Internal Revenue Code, in connection with a proposed grant to A.

You are a private operating foundation. Our records show you are recognized as exempt under section 501(c)(3) of the Code, and are classified as a private operating foundation under section 4942(j)(3) of the Code.

A is recognized as exempt from federal income tax under section 501(c)(3) of the Code, and has been classified as a section 509(a)(1) and 170(b)(1)(A)(iii) public charity.

You propose to make a grant of $x to A over a 5 year period of time at a rate of $y per year. A is a hospital which conducts research in furtherance of the care of children. A will use the grant funds to recruit and compensate a prominent scientist in pediatric genetic research. Because of your other multi-year grant commitments you must pay out the proposed grant to A on a five year basis.

Section 4942(a) of the Code imposes a tax on the undistributed income of a private foundation for any taxable year. The term `undistributed income' means the amount by which the distributable amount exceeds the qualifying distribution for a particular year.

Section 4942(g)(1) of the Code defines "qualifying distribution "as: (a) any amount including that portion of reasonable and necessary expenses paid to accomplish one or more purposes described in Section 170(c)(2)(b) of the Code, other than any contribution to (i) an organization controlled (directly and indirectly) by the foundation or one or more disqualified persons (as defined in section 4946) with respect to the foundation, except as provided in paragraph (3), or (ii) a private foundation which is not an operating foundation (as defined in subsection (j)(3), except as provided in paragraph (3),

Section 4942(g)(2)(B)(i) of the Code provides, in pertinent part, that an amount set aside for a specific project which comes within one or more of the purposes described in section 170(c)(2)(B) 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 will be paid for the specific project

247

within five years and at the time of the set-aside the private foundation establishes to the satisfaction of the Secretary that the project is one which can better be accomplished by such set-aside than by an immediate payment of funds.

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 charitable purposes 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 (b) are satisfied. The requirements of this paragraph 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 described in subparagraph (2) of this paragraph, or

(ii) With respect to a set-aside made in a taxable year beginning after December 31, 1974, the private foundation satisfies the cash distribution test described in subparagraph (3) of this paragraph.

Section 53.4942(a)-3(b)(2) of the regulations provides that the suitability test is satisfied if the private foundation establishes to the satisfaction of the Commissioner that the specific project for which the amount is set aside is one that can be better accomplished by the set-aside than by the immediate payment of funds. Specific projects that can be better accomplished by the use of a set-aside include, but are not limited to, projects 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 (as defined in section 4944(c)) or where grants are made as part of a matching-grant program.

Because A is an organization recognized as exempt from federal income tax under section 501(c)(3) of the Code, and is classified as a section 509(a)(1) and 170(b)(1)(A)(iii) public charity engaged in providing health care services, we conclude that a grant to A, would be a qualifying distribution within the meaning of section 4942(g).

You applied for the Commissioner's approval of the set-aside before the end of the 1999 taxable year in which you proposed to set aside $y for payment to A to establish a chair in pediatric genetic research at A. Because of your many multi-year grant commitments you are not able to pay out the full grant of $x in one tax year.

Based on the information provided, we approve your set-aside for the year 1999 as a qualifying distribution. In addition, we rule that your 1999 set-aside meets the requirements contained in section 4942(g)(2) of the Code.

Our approval of your set-aside is based on our understanding that the pediatric genetic orthopedic research at A can better be accomplished through a set-aside than through an immediate payment of funds, and that the funds will be expended within 60 months from the date of the set-aside as indicated in your letter.

Under section 53.4942(a)-3(b)(8) of the regulations your proposed set-aside must be evidenced by the entry of a dollar amount on your books and records as a pledge or obligation to be paid at a

248

future date or dates. Any amount which is set aside shall be taken into account for purposes of determining your minimum investment return under section 53.4942(a)-2(c)(1) of the regulations, and any income attributable to such set-aside shall be taken into account in computing adjusted net income under section 53.4942(a)-2(d).

Accordingly, based upon the information furnished, we approve the set-aside to A.

We are informing your key District Director of this action. Please keep this letter as part of 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 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. We are sending a copy of this ruling letter to your key District Director.

Sincerely yours,

Robert C. Harper, Jr.

Robert C. Harper, Jr.
Manager, Exempt Organizations
Technical Group 3

249