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

200028037

Date: APR 13 2000

Contact Person:

ID Number:

Telephone Number:

OP:E:EO:T3

SIN# 4942.03-01 4942.03-05 4942.03-07

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A =
B =

Employer Identification Number:

Dear Sir or Madam:

This is in reply to a ruling request dated November 12, 1999, with respect to setting aside additional funds to complete the construction of B and that such set-aside will satisfy the suitability test or section 4942(g)(2)(B)(i) of the Internal Revenue Code.

You are exempt under section 501(c)(3) of the Code and classified as a private foundation. Your organization and its creator have pledged $300x toward the planning and construction of B by A You have paid $25x against that pledge in 1998 and your creator has personally paid $145x against the same pledge. The balance of $145x has been set aside by your organization for payment by in 2000 or 2001. The $145x has been raised through the sale of securities by the trustees of your organization. The amount set aside will most appropriately be paid by your organization to A after the project has been fully approved by the required authorities. The trustees do not deem it prudent to pay over the funds prior to that time. The facility is in the early permitting stage and it is not contemplated that construction will begin before the spring or summer of 2000.

The facility will include two state-of-the art marine science teaching and research classrooms and lab dedicated to research into the culture and propagation of marine organisms. This facility will also house a marine mammal rehabilitation center with seal tanks and diagnostic and medical care labs. In addition, the facility will incorporate a number of new

218

sustainable design concepts such as solar heating, water recycling and material insulation. The lab will support a number of university programs. It will also support a new masters program in marine science and enterprise as well as a baccalaureate program in aqua culture and aquarium studies, psychobiology, environmental studies and environmental sciences, and programs such as chemistry and biology. It is also planned that students in programs such as physical therapy and occupational therapy will be involved in some degree in the rehabilitation of the seals.

Section 4942(a) of the Internal Revenue Code imposes a tax on the undistributed income of private foundations.

Section 4942(c) of the Code defines "undistributed income" to mean the amount by which the distributable amount for a taxable year exceeds the qualifying distributions for that year.

Section 4942(g)(1) of the Code provides, in relevant part, that the term "qualifying distribution" means (A) any amount (including that potion of reasonable and necessary administration expenses) paid to accomplish one or more purposes described in section 170(c)(2)(B).

Section 4942(g)(2) of the Code permits a private foundation to treat as qualifying distribution amounts set-aside for a specific charitable, educational, religious or similar project in the year of the set-aside even though actual payment of such amounts will not be made until a later taxable year or years, but only if, at the time of the set-aside, the private foundation establishes to the satisfaction of the Secretary or his delegate 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 than by 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 of the purpose described in section 170(c)(1) or (2)(B) 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 are satisfied. The requirements of paragraph (b) 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, 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 private foundation establishes that the specific project is one that can be better accomplished by the set-aside than by the immediate payment of funds.

The set-aside in this case of $145x is being made for a specific project and no further additions to the set-aside are contemplated. Additionally, the set-aside will be paid within a period ending not more than twenty-four months after the date of your request for a ruling. The construction of the facility is one in which expenditures must be made over a long period of time in order to assure the completion of the project.

Based on the information submitted and assuming the facts to be as stated, we rule that

the set-aside meets the requirements of section 4942(g)(2)(B)(i) of the Code and section 53.4942(a)-3(b)(2) of the regulations. We are informing your key District Director of this ruling. Because this ruling could help resolve future questions about your federal income tax status, you should keep it in your permanent records.

Please note that section 53.4942(a)-3(b)(8) of the regulations requires the set-aside to be evidenced by the entry of a dollar amount on your books and records as a pledge or obligation to be paid at a future date. 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) and any income attributable to the set-aside shall be taken into account in computing adjusted net income under section 53.4242(a)-2(d).

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.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

(signed) Robert C Harper, Jr.

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

220