4947.01-00

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

200235035

Date:
JUN 5, 2002

Contact Person:

Identification Number:

Telephone Number:
T:EO:B2

Employer Identification Number:

Legend: M =
N =

Dear Sir or Madam:

This is in reply to your letter of February 19, 2002, requesting a ruling that you are classified as a non-exempt charitable trust within the meaning of section 4947(a)(l) of the Internal Revenue Code.

You were created on , to make payments for charitable purposes on behalf of M . You stated that you never applied for recognition of exemption under section 50l(c)(3) of the Code. All the property you have received or expect to receive will be permanently dedicated to accomplish charitable purposes. Clause Three D of the trust document, states that "the term 'charitable purposes' shall be limited to and shall include only religious, charitable, scientific, literary, or educational purposes within the meaning of those terms as used under Section 50l(c)(3) of the Internal Revenue Code, or the corresponding section of any future federal tax code, but only such purposes as also constitute charitable purposes under the law of trusts of N."

You requested the following rulings:

1. That you are a non-exempt charitable trust within the meaning of section 4947(a)(l) of the Code and section 53.4947-1(b) of the Income Tax Regulations because all of your unexpired interests are devoted to one or more of the purposes described in section 170(c)(2)(b) and a deduction is allowable for contributions made to you under section 170 and 2055.

2. Individual donors contributing to you shall be allowed to deduct, for the taxable year during which the contribution is made to you, their contributions as a charitable contribution to the extent of the maximum permissible limitations of section 170(b)(l)(B) or section 170(b)(l)(D), which ever shall apply, because you are a private foundation other than one that is described within the meaning of section 170(b)(l)(E)(ii).

Re:

3. Any taxable estate providing bequests, legacies, devises, or transfers to you shall be allowed to deduct from the value of the gross estate, the amount of such charitable contribution as provided for in section 2055 of the Code.

Section 170(c)(2)(B) of the Code provides for the deductibility of contributions to a corporation, trust, or community chest fund, or foundation organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or to foster national or international amateur sports competition or for the prevention of cruelty to children or animals.

Sections I70(b)(1)(B) and 170(b)(I)(D) of the Code provide special rules limiting the deduction individuals may take on their charitable contributions.

Section 170(b)(1)(E)(ii) of the Code describes certain private foundations which are entitled to favorable treatment regarding the deductibility of contributions made to them.

Section 501(a) of the Code exempts certain organizations described in subsection (c) or (d) or section 401(a) from taxation.

Section 50I(c)(3) of the Code describes organizations organized and operated exclusively for religious, charitable and educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section I.50I(c)(3)-I(c)(I) of the regulations provides that an organization will be regarded as operated exclusively for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 50I(c)(3) of the Code. An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section I.50I(c)(3)-I(d)(2) of the regulations provides that the term "charitable" is used in section 50I(c)(3) in its generally accepted legal sense. It includes relief of the poor and distressed, the advancement of religion, the advancement of education and lessening the burdens of government.

Section 508(a) of the Code states that except as provided in subsection (c), an organization organized after October 9, I969, shall not be treated as an organization described in section 50I(c)(3) unless it has given notice to the Secretary, in such manner as the Secretary may prescribe, that it is applying for recognition of such status.

Section 1.508-1(a)(2) of the regulations provides that the section 508(a) notice is made by submitting to the Service a properly completed and executed Form 1023, exemption application.

Section 1.508-1(a)(3)(d) of the regulations states that solely for purposes of section 507, 508(d)(1), 508(d)(2)(A) and 508(d)(3), 508(e), 509 and Chapter 42, a trust described in section 4947(a)(I) does not have to file the notice described in section 508(a).

Re:

Section I.508-2(b)(1)(viii) of the regulations states that since a charitable trust described in section 4947(a)(1) is not required to file a notice under section 508(a), section 508(d)(2)(B) and 1.508-2(b)(1)(i)(b) which disallow deductions for gifts or bequests do not apply to such a trust.

Section 4947(a)(1) of the Code states that for purposes other than section 508(a), (b) and (c), a trust which is not exempt under section 501(a), all the unexpired interests in which are devoted to one or more purposes described in section 170(c)(2)(B), shall be treated as an organization described in section 501(c)(3).

Section 53.4947-1(a) of the Foundation and Similar Excise Tax Regulations provides that in general, section 4947 subjects trusts which are not exempt from taxation under section 501(a), all or part of the unexpired interest in which are devoted to one or more of the purposes described in section 170(c)(2)(B), and which have amounts in trust for which a deduction was allowed under section 170, 545(b)(2), 556(b)(2), 642(c), 2055, 2106(a)(2), or 2522 to the same requirements and restrictions as are imposed on private foundations. For the purposes of this section, a trust shall be presumed to have amounts in trust for which a deduction was allowed, if a deduction would have been allowable under one of the above mentioned sections of the Code.

Section 53.4947-I(b) of the regulations provides that because a charitable trust is not treated as an organization described in section 501(c)(3), the trust is subject to the excise tax on its investment income under section 4940(b) rather than the tax imposed by section 4940(a).

Section 4940(b) of the Code imposes a tax on each private foundation which is not exempt from taxation under section 501(a) equal to:

(1) the amount (if any) by which the sum of the tax on net investment income imposed under section 4940(a), computed as if such private foundation were exempt from taxation under section 501(a) and described in section 501(c)(3) for the taxable year, plus (B) the amount of the tax which would have been imposed under section 511 for such taxable year if such private foundation had been exempt from taxation under section 501(a), exceeds,

(2) the tax imposed under subtitle A on such private foundation for the taxable year.

Section 2055 of the Code pertains to deductions from the value of a taxable estate for certain transfers of property made for public, charitable, and religious uses.

The information you have submitted establishes that your assets are permanently dedicated to the accomplishment of charitable purposes as that term is described in section 170 and 501(c)(3) of the Code and the regulations thereunder. You have represented that you have not applied for recognition of exemption under section 501(c)(3) of the Code. Accordingly, you are a charitable trust within the meaning of section 4947(a)(1).

As an organization described in section 4947(a)(1) of the Code, donors may deduct contributions to you as provided in section 170 of the Code. Bequests, legacies, devises,

Re:

transfers, or gifts to you or for your use are deductible for federal estate and gift tax purposes if they meet the applicable provisions of section 2055, 2106, and 2522 of the Code. In addition, you are treated as a private foundation and subject to the various foundation excise taxes imposed by Chapter 42 of the Code on the various activities of private foundations.

You are required to file Form 990-PF, *Return of Private Foundation or Section 4947(a)(1) Trust Treated as a Private Foundation.* Form 990-PF must be filed by the 15th day of the fifth month after the end of your annual accounting period. A penalty of $20 a day is charged when a return is filed late, unless there is reasonable cause for the delay. The maximum penalty charged cannot exceed $10,000 or 5 percent of your gross receipts for the year, whichever is less. For organizations with gross receipts exceeding $1,000,000 in any year, the penalty is $100 per day per return, unless there is reasonable cause for the delay. The maximum penalty for an organization with gross receipts exceeding $1,000,000 shall not exceed $50,000. This penalty may also be charged if a return is not complete, so please be sure your return is complete before you file it. Form 990-PF should be filed with the Ogden Service Center, Ogden, UT 84201-0027.

You are required to make certain returns available for public inspection for three years after the later of the due date of the return or the date the return is filed. The returns required to be made available for public inspection are Form 990-PF, *Return of Private Foundation or Section 4947(a)(1) Nonexempt Charitable Trust Treated as a Private Foundation*, and Form 4720, *Return of Certain Excise Taxes on Charities and Other Persons Under Chapters 41 and 42 of the Internal Revenue Code.*

Please note that section 4940(b) of the Code imposes a special excise tax on the investment income of an organization described in section 4947(a)(l) of the Code.

Based on the information you have submitted we have concluded:

1. That you are a non-exempt charitable trust within the meaning of section 4947(a)(l) of the Code and section 53.4947-1(b) of the regulations because all your unexpired interests are devoted to one or more of the purposes described in section 170(c)(2)(b) and a deduction is allowable for contributions made to you under section 170 and 2055.

2. Individual donors contributing to you shall be allowed to deduct, for the taxable year during which the contribution is made to you, their contributions as a charitable contribution to the extent of the maximum permissible limitations of section 170(b)(l)(B) or section 170(b)(l)(D), which ever shall apply, because you are a private foundation other than one that is described in section 170(b)(l)(E)(ii).

3. Any taxable estate providing bequests, legacies, desires, or transfers to you shall be allowed to deduct from the value of the gross estate, the amount of such charitable contribution as provided for in section 2055 of the Code.

Re:

This ruling is based on the understanding that there will be no material changes in the facts upon which it is based. Any such change should be reported to the Ohio TE/GE Customer Service office.

Please use the employer identification number indicated in the heading of this letter on all returns you file and in all correspondence with the Internal Revenue Service. Because this letter could help resolve any questions concerning your federal income tax status, it should be kept in your permanent records.

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.

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. For other matters, including questions concerning reporting requirements, please contact the Ohio TE/GE Customer Service office at 877-829-5500 (a toll free number).

Sincerely yours,

Joseph Chasin
Acting Manager,
Exempt Organizations
Technical Group 2

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

200235036

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Date: JUN 6 2002

Uniform Issue List Number: 4942.03-07

Contact Person:

Identification Number:

Telephone Number:

T:EO:B2

Legend
F =
L =
x =

Dear Applicant:

This is in reply to your ruling request of December 7, 2001, 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 in your tax year ended on December 31, 2001.

Our records indicate that you, F, are a nonexempt charitable trust under section 4947(a)(1) 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 acquire waterfront land, L, for ecological preservation and donation to a local governmental unit for such public purposes. 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 indicate that the cost of this project can better be accomplished by the use of a set-aside of your income, rather than by immediate payment of your funds, because this project requires additional time for legal actions to result in marketable title to the land from the seller.

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, 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 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 Foundation and Similar Excise Taxes 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 requirements are met if 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. 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.

Your set-aside for this purchase of land 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 and section 53.4942(a)-3(b)(2) of the regulations because this set-aside will provide necessary time for pending legal actions to establish the seller's marketable title to the land.

Thus, your specific project of a purchase of waterfront land 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 purchase of land will be a qualifying distribution under section 4942(g)(2)(B)(i) of the Code and section 53.4942(a)-3(b)(2) of the regulations for your tax years when the amounts of income are set aside.

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 on 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) Terrell M. Berkovsky

Terrell M. Berkovsky
Manager, Exempt Organizations
Technical Group 2