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

SIN: 4942.03-07
No Third Party Contacts

Date: AUG 28 2002

Contact Person:

Identification Number:

Telephone Number:

T:EO:B4

Employer Identification Number:

Legend:

B =
x =
y =
z =

Dear Applicant:

This is in response to a letter dated December 28, 2001, concerning whether B, an organization recognized as exempt from Federal income tax under section 501(c)(3) of the Internal Revenue Code, and classified as a private foundation as described in section 509(a) of the Code, may make a set-aside under section 4942(g)(2)(B)(i), for its taxable years 2000 and 2001.

The information submitted indicates that the specific project for which the set-aside has been requested is the purchase and installation of a limited-use elevator for a historic structure that B maintains for use as a senior center. The elevator will make three floors of the building entirely accessible to the elderly, or others, who are physically handicapped.

Because the project involves considerable renovation to the historic structure and will require an additional allocation of funds, B has been advised by the restoration architect to combine the elevator purchase and the alterations into one project package. In 2000, B was informed that the project would take two years to complete and that final payment would be due in 2002.

It is estimated the entire project will be completed in year 2002, thus enabling distribution of the set aside amounts of x for the year 2000 and y for the year 2001. The total cost of the project will be approximately z.

Section 4942 of the Code imposes an excise tax on private foundations that fail to make certain minimum annual "qualifying distributions."

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 Foundation and Similar Excise Taxes 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) 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 this 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 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 an example of a suitable project a plan to fund a specific research program that is of such magnitude as to require an accumulation of funds before beginning the research, even though not all of the details of the program have been finalized.

B requests a ruling that it may make a set-aside, under the suitability test of the section 4942(g)(2)(B)(i) of the Code, for years 2000 and 2001, constituting a qualifying distribution under section 4942(g)(1)(A) of the Code.

With respect to the set-aside, B must show (1) that the amounts set-aside accomplishes one or more purposes described in section 170(c)(2)(B) of the Code, (2) to the satisfaction of the Commissioner, (3) that the set-aside amount will be paid for the specific project within 5 years, and (4) the project is one that can be better accomplished by such set-aside rather than by immediate payment of funds (the "suitability test").

The set-asides are in the amount of x for year 2000 and y for year 2001. The set-asides will be used to purchase and install a limited-use elevator for the building that B maintains for use as a senior center. The elevator will make three floors of the building entirely accessible to the elderly, or others, who are physically handicapped. The purchase and installation of the elevator, to make the building entirely accessible to the elderly, or others, who are physically handicapped, furthers purposes described in section 170(c)(2)(B) of the Code. Set-asides rather than immediate payments better accomplish the large expenditure of funds in order to assure the continuity of the project. The amount set-aside will be distributed within 5 years, satisfying the requirements of section 4942(g)(2) of the Code.

In summary, the set-aside by B accomplishes one or more purposes described in section 170(c)(2)(B) of the Code. The set-aside amounts will be paid for the specific projects within 5 years, and the projects are one that can be better accomplished by such set-asides rather than by immediate payment of funds.

Accordingly, based on the facts and circumstances as stated above, we rule that:

> B's set-aside of funds will satisfy the suitability test of Section 4942(g)(2)(B)(i) of the Code, and therefore will constitute a qualifying distribution for the Foundation's fiscal years of 2000, and 2001.

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.

Except as specifically ruled upon above, no opinion is expressed concerning the federal income tax consequences of the transaction described above under any other provision of the Internal Revenue Code.

Because this ruling could help resolve future questions about your federal income tax status, you should keep it in your permanent records.

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 about this ruling, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

Gerald V. Sack

Gerald V. Sack
Manager, Exempt Organizations
Technical Group 4