



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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Number: **200604035**
Release Date: 1/27/06
236848
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Contact Person:
Identification Number:
Telephone Number:

UIL: 4942.03-07

Employer Identification Number:

Legend:

A =
B =
x =
y =
z =
gg =

Dear

This letter is in response to your request seeking approval of a modification of a set-aside of funds in the amount **\$gg** under section 4942(g)(2) of the Internal Revenue Code for the taxable year ended **x**.

Facts

Previously, the Internal Revenue Service issued a determination letter recognizing **A** as an organization described in section 501(c)(3) of the Internal Revenue Code and as a private foundation under section 509(a) of the Code. **A** was also classified as a private operating foundation. **A** operates a facility for housing for the aged and needy.

A previously sought to set aside **\$gg** to purchase a piece of real estate, in order to build a new residential facility for housing for the aged and needy. On **z**, the Internal Revenue Service approved this set-aside for the year ended **x** to purchase land for this facility before **y**.

A informed us that it wished to modify this set-aside because construction of a new residential facility has become economically impractical due to the unanticipated increased costs of constructing such a facility. Also, **A** will no longer operate residential housing for the aged and

needy. A now wishes to spend the funds set-aside for housing subsidies for the aged and needy no later than y. A has sent us details of the proposed housing subsidy program. Also, A's Board of Trustees will amend its Articles of Incorporation ("Articles") to reflect this change in purpose. A has sent us a copy of the proposed amendment to its Articles. Specifically, A will spend the funds set-aside as follows, in the following priority:

1. To cover any expenses incurred with transitioning the activities of A from providing direct housing to subsidizing expenses for its existing tenants to move to new apartments.
2. To the extent any funds are remaining after step #1, the balance will be distributed to a donor advised fund of B, a public charity exempt under section 501(c)(3) of the Code, in which deductions are allowed under section 170(b)(1)(A)(vi), to be used for the purpose of providing housing for the needy and aged.

Ruling Requested

A set-aside of funds in the amount \$ggg, under section 53.4942(a)-(3)(b)(2) of the Foundation and Similar Excise Taxes regulations, for the purposes described above, will be treated as a qualifying distribution under section 4942(g)(2)(B)(i) of the Code for the taxable year ended x.

Law

Section 4942(a) of the Code imposes a tax on the undistributed income of a private foundation which has not been distributed before the first day of the second (or any succeeding) taxable year following such taxable year (if such day falls within the taxable period).

Section 4942(c) of the Code defines "undistributed income" as the amount by which the distributable amount for such taxable year exceeds qualifying distributions made before such time out of such distributable amount.

Section 4942(f) of the Code defines the term "distributable amount" as an amount equal to the sum of the minimum investment return (as adjusted) reduced by the sum of the taxes imposed on such private foundation under subtitle A and section 4940.

Section 4942(e) defines minimum investment return for any private foundation for any taxable year as five percent of the aggregate fair market value of all assets of the foundation other than those which are used directly in carrying on the foundation's exempt purpose over any acquisition indebtedness with respect to such assets.

Section 4942(g)(1) defines "qualifying distribution" as any amount paid for tax exempt purposes as defined in section 170(c)(2)(B) of the Code.

Section 4942(g)(2) provides that an amount set-aside for an approved purpose may be treated as a qualifying distribution.

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)(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.

Analysis

We had previously ruled that **A** met the suitability test described in section 4942(g)(2)(B)(i) of the Code and section 53.4942(a)-3(b)(2) of the regulations. However, due to economic reasons, it became impractical for **A** to use the funds set aside for the purposes described in the previous ruling. Therefore, **A** has informed the Internal Revenue Service that it now wishes to achieve similar charitable activities by spending the funds set-aside for housing subsidies for the aged and needy, and distributing the remaining balance of the funds to a donor advised fund of **B**, a public charity exempt under section 501(c)(3) of the Code, in which deductions are allowed under section 170(b)(1)(A)(vi). These funds will be spent no later than **y**. Accordingly, **A** continues to meet the suitability test of section 53.4942(a)-3(b)(2) of the regulations.

Ruling

A set-aside of funds in the amount **\$gg**, under section 53.4942(a)-(3)(b)(2) of the regulations, for the purposes described above, will be treated as a qualifying distribution under section 4942(g)(2)(B)(i) of the Code for the taxable year ended **x**.

This ruling is based on the understanding there will be no material changes in the facts upon which it is based.

This ruling does not address the applicability of any section of the Code or regulations to the facts submitted other than with respect to the sections described.

This ruling is directed only to the organization that requested it. Section 6110(k)(3) of the Code provides it may not be used or cited by others as precedent.

This ruling will be made available for public inspection under section 6110 of the Code after certain deletions of identifying information are made. For details, see enclosed Notice 437, *Notice of Intention to Disclose*. A copy of this ruling with deletions that we intend to make available for public inspection is attached to Notice 437. If you disagree with our proposed deletions, you should follow the instructions in Notice 437.

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.

In accordance with the Power of Attorney currently on file with the Internal Revenue Service, we are sending a copy of this letter to your authorized representative.

Sincerely,

Lawrence M. Brauer
Acting Manager
Exempt Organizations
Technical Group 1

Enclosure
Notice 437