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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Number: **200525015**
Release Date: 6/24/2005
TEGE:EO

UIL Number: 4942.03-07

Date: 04/01/05

Contact Person:

Identification Number:

Telephone Number:

Employer Identification Number:

Legend:
A =
B =
x =
y =
z =
aa =
bb =
cc =
dd =
ee =
ff =
gg =

Dear :

This letter is in response to your request dated December 29, 2004 seeking approval 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

On y, B formed A as a charitable trust. A is a grant-making entity, the purpose of which is to distribute grants among charitable organizations designated by B.

On z, 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.

The specific donees, and the amounts distributed to each donee, have changed from time to time, in accordance with the terms of the trust. The final change occurred in aa.

As amended, the trust instrument directs the trustee to distribute funds totaling $bb per year by paying $cc to each of eight separate charitable organizations.

B initially funded A with $dd. When B died on ee, A received $ff, representing a post-mortem addition as a result of B's death.

Applicable state law requires private foundations to distribute income at such times and in such manner as not to subject the private foundation to tax under section 4942 of the Code.

The mandatory amounts that are required to be distributed under section 4942 of the Code exceed by $gg the $bb per year payout specified by the trust instrument.

The trustee has paid the distributions which are required by the terms of the trust. The trust instrument does not permit distributions to any entity other than the designated donees, nor does it authorize payments in excess of $cc per year to any one of the designated donees. The trustee has petitioned a court for an Order docketing the trust, and for an Order instructing the trustee as to the identity of the charitable donees entitled to distribution of the additional amounts which are from time to time required to be paid as qualifying distributions under the trust instrument. As of the date of your ruling request, this litigation was ongoing.

As a result of the litigation, the trustee has not made any trust distributions exceeding bb for the taxable year ended x. Furthermore, the trustee does not intend to make distributions exceeding bb annually pending the resolution of this litigation. Due to the nature of the current litigation and until the current litigation is resolved, the trustee is unable to determine which beneficiaries might be entitled to a distribution, and, therefore, it is not possible, nor appropriate, for distributions to be made, in amounts in excess of bb.

You have represented that the contingent set-aside of $gg for the year ended x will be evidenced by the trustee through the entry on the books and records of the trust of the dollar amount of the set-side as a pledge to paid as a qualifying distribution within the meaning of section 53.4942(a)-3(b)(9) of the regulations not later than the last day of the taxable year following the taxable year in which the litigation is finally resolved.

Ruling Requested

A contingent set-aside of funds in the amount $gg, under section 53.4942(a)-(3)(b)(9) of the regulations, will be treated as a qualifying distribution under section 4942(g)(2) 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), in substance and generally, 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), in substance and generally, 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), in substance, provides that an amount set-aside for an approved purpose may be treated as a qualifying distribution.

Section 53.4942(a)-3(b)(9) of the regulations provides that in the event that a private foundation is involved in litigation and may not distribute assets or income because of a court order, the private foundation may seek and obtain a set-aside for a purpose described in section 53.4942(a)-3(a)(2). The amount of the set-aside shall be equal to that portion of the private foundation's distributable amount which is attributable to the assets or income that are held pursuant to court order and which, but for the court order precluding the distribution of such assets or income, would have been distributed. In the event that the litigation encompasses more than one taxable year, the private foundation may seek additional contingent set-asides.

Analysis

A meets the criteria for a contingent set-aside provided for in section 53.4942(a)-3(b)(9) of the regulations. An exempt private foundation exists, and there is litigation resulting in a court order precluding distribution of assets or income pending the entry of a future court order. The trustee of A has sought a court Order resolving this situation. Thus, as required by the regulation, there is litigation and there is a court order prohibiting distribution of assets or income. Thus, a contingent set-aside provided by section 53.4942(a)-3(b)(9) of the regulations is necessary and appropriate.

Ruling

Based on the foregoing, we rule that a contingent set-aside of funds in the amount $gg, under section 53.4942(a)-(3)(b)(9) of the regulations, is treated as a qualifying distribution under section 4942(g)(2) 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,

Debra J. Kawecki
Manager, Exempt Organizations
Technical Group 1

Enclosure
Notice 437