SIW:4942.00-00

Internal Revenue Service

200020059

Department of the Treasury

Washington, DC 20224

OP:E:EO:T4

Contact Person:

Telephone Number:

In Reference to:

Date: FEB 23 2000

Legend:

B=
C=
D=
E=
F=

x=

Dear Sir or Madam:

This is in response to your letter dated September 22, 1999, wherein you requested a ruling that a set-aside of funds by B be recognized as satisfying 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.

B is exempt under section 501(c)(3) of the Code and is classified as a private foundation under section 509(a).

In a ruling letter dated June 3, 1999, F was determined to be exempt from federal income tax under section 501(c)(3) of the Code with nonprivate foundation classification under sections 509(a)(1) and 170(b)(1)(A)(iii). F was created in accordance with an agreement between B and ,C, an exempt corporation which includes D and its School of Medicine, as the founding members.

F's stated purposes are to conduct cancer research, innovative cancer diagnosis and clinical treatment, including the establishment of a center for cancer research, diagnosis, and clinical treatment located at C, and possibly centers at one or more other medical facilities, including, but not limited to E.

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F will employ personnel to conduct the research. Such personnel may hold dual employment with C. All investigators will hold dual employment with C. There may also be participation by visiting scientists.

In furtherance of its purposes, F has decided to create a new level of research and treatment that does not duplicate current C supported programs, nor create redundancy or replication of current programs; to support only new forms of research and treatment which will create new dimensions in health care to aid humankind; and, to improve the treatment of cancer to the extent that it will make current treatment obsolete. F's mission will be pursued through a Scientific Advisory Board which will establish goals and objectives, advise F's Board of Directors as to the achievement of such goals and objectives, and recommend investigators.

B has proposed a set-aside of x for purposes of funding a specific cancer research project, by entry of this amount on its books and records as an obligation to be paid over future periods. B has determined that the project can better be accomplished by a set-aside than by the immediate payment of funds because the funding periods and requirements for the appropriate development of the research anticipate expenditures over a period of years, rather than all at once. In light of the scope of the project to be funded, and amount set-aside, it is expected that the set-aside will actually be paid for the project on or before September 30, 2003, a period of time that ends not more than 48 months after the date of the set-aside.

B has not indicated that it anticipates any planned additions to the set-aside after its initial establishment.

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 as a qualiying 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 beer finalized.

B has stated that the proposed set-aside will be used to accomplish a purpose described in section 170 of the Code, specifically, the funding of a specific cancer research project. The amount set-aside will actually be paid to the project on or before September 30, 2003, which is within 60 months from the date of the set-aside. The set-aside satisfies the suitability test because the expenditures will be used to fund a research project which is in furtherance of exempt purposes, as required under section 53.4942(a)-3(b)(2) of the regulations. And, the project is long-term in nature and one which can be better accomplished by sit-aside than by immediate payment of funds.

Based on the foregoing, we rule that the set-aside of x dedicated to a specific research project, meets the requirements of section 4942(g)(B)(i) of the Code and section

53.4942(a)-3(b)(2) of the regulations. Accordingly, the set-aside can be treated as a qualifying distribution expended directly for the active conduct of exempt activities for your taxable year ending September 30, 1999.

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.

We are informing the office of this action. Please keep a copy of this ruling with 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.

Sincerely yours,

Gerald V. Sack

Gerald V. Sack
Manager, Exempt Organizations
Technical Group 4