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

200134030

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Date: MAY 29 2001

To Review: 5/23/01

Uniform Issue List:

4942.03-07

Contact Person:

Identification Number:

Telephone Number:

T:EO:B4

Employer Identification Number:

Legend:

X=

Dear Applicant:

We have considered your request dated December 21, 2000, that a proposed set-aside be treated as a qualifying distribution within the meaning of section 4942(g)(2) of the Internal Revenue Code.

Your Foundation (the "Foundation") has been recognized as exempt from federal income tax under section 501(c)(3) of the Code and as a charitable trust has been classified as a private operating foundation within the meaning of section 509(a) of the Code.

The Foundation operates and maintains a center for advanced studies in Europe for the benefit of scholars who wish to pursue projects in the humanities and social sciences. The Foundation also sponsors creative projects by visual artists, photographers, composers, and writers.

The Foundation's campus consists of an apartment complex of four buildings, including eleven furnished apartments, a reference library, a darkroom, a visual arts studio and a music composition studio, as well as staff offices.

The Foundation selects scholars and artists for Fellowships once a year. Fellows are selected from a variety of disciplines for each semester, and include members of university and college faculties, independent scholars working on specific projects, teachers in secondary schools, graduate students and writers, visual artists, photographers and composers. Fellows are selected by one of four Foundation selection committees pursuant to procedures approved by the Internal Revenue Service.

The Fellows reside and work at the Foundation's center in Europe during the term of their fellowships. Although they work independently, they meet together approximately once a week to hear a Fellow describe his or her project. During each semester the Foundation organizes a number of events such as chamber music concerts, film screenings, poetry readings, and day excursions. A written report on each Fellow's work is required at the end of the semester.

The buildings comprising the Foundation's center were originally built many years ago. A substantial program of updating the facility and improving energy efficiency was initiated in the late 1990s. With this program to ensure the integrity of the existing facility nearing completion, the Trustees of the Foundation are now addressing ways in which to make fellowships available to a larger number of candidates. The Trustees have concluded that an additional artist's studio on or near the existing campus is desirable to accommodate the Fellows' work most productively. They have also identified a need for an additional apartment to accommodate Fellows' research close to one of the research centers located nearby.

The Trustees and the Foundation's Executive Director have created plans to meet the Foundation's long-term facilities needs. The components of the facilities project, the visual artist's studio and the apartment are fully described in the Foundation's request. Architectural sketches of the proposed studio designs accompanied the set-aside request. Finding and furnishing a suitable apartment and obtaining the necessary approvals and completing the real estate transaction is expected to take more than a year. They have determined that this facilities project is one that can best be accomplished over a period of several years, using funds set aside in 2000 for this purpose as well as funds projected to be available from investment income in future years.

Accordingly, the Trustees of the Foundation by resolution have approved a set-aside of funds in the amount of $X. They have further authorized this request to the Internal Revenue Service for approval of the suitability of the set-aside and confirmation of its status as a qualifying distribution of the Foundation for the year 2000. No further additions to this set-aside are contemplated. A statement by the Foundation's Managing Trustee that the amount set-aside for the facilities project as described above will actually be paid for this project within 60 months is included in this request.

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 (c)(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.

Rev. Rul. 75-511, 1975-2 C.B. 450 describes a private foundation whose primary activity was the granting of educational scholarships. The grants were made on an annual basis renewable each year for a 3 year period, provided the student getting the grant maintained a certain academic level of achievement. The foundation requested approval to set aside in a separate account the total amount expected to be paid out to each student in the year in which the initial grant was made. Thereafter, when the grant was renewed, payment would be made out of the student's set-aside account. The service held that the foundation's scholarship program was one that was regularly carried on as part of its normal, ongoing charitable activities. It also found that in most instances in its prior years, the foundation was able to pay the annual renewal amount of current income. The foundation did not show any compelling reasons why it could not continue to finance the grants in this manner. The Service therefore concluded that the foundation failed to show that its grant-making program could be better accomplished by the use of set-asides, than by immediate payment of funds, and therefore denied its request.

The $X set-aside for the projects listed above is being set aside for a specific project that accomplishes a charitable purpose under section 170(c)(2)(B) of the Code. The Service has previously determined that the Foundation has regularly provided significant support to scholars and artists. A set-aside will allow the Foundation to complete construction plans and purchase plans and obtain the necessary governmental permits for both aspects of the project before commencing. The specific projects listed above for which the set-aside is being made are all designed to further and enhance these charitable activities. Accordingly, the suitability test of section 53.4942(a)-3(b)(2) of the regulations is satisfied.

The developments and improvements described above can better be accomplished by a set-aside rather than by immediate payment of funds. This conclusion derives from the long-term nature and extent of the project, as well as the manner in which the Foundation

intends to fund the project.

Based on the foregoing, we rule that the set-aside of $X on the Foundation's books and records, specifically devoted to the planned construction of an artist's studio and purchase of apartments on or near the existing campus, meets the requirements of section 4942(g)(2)(B)(i) of the Code and section 53.4942(a)-3(b)(2) of the regulations. Accordingly, the set-aside may be treated as a qualifying distribution for the Foundation's taxable year ending December 31, 2000.

We direct the Foundation's 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. Further, any amount which is set aside shall be taken into account for purposes of determining the foundation's minimum investment return (see section 53.4942(a)-2(c)(1)), and any income attributable to such set-aside shall be taken into account in computing adjusted net income (see section 53.4942(a)-2(d)).

This ruling is based on the understanding that there will be no material changes in the facts upon which it is based. Any changes that may have a bearing upon the Foundation's tax status should be reported to the Ohio Tax Exempt and Government Entities (TE/GE) Customer Service Office, which deals with exempt organizations matters. The mailing address is: Internal Revenue Service, TE/GE Customer Service, P.O. Box 2508, Cincinnati, OH 45201.

We are sending a copy of this ruling to the Ohio TE/GE Office. Because this letter could help resolve any questions about the Foundation's tax status, the Foundation should keep it with its 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.

Thank you for your cooperation.

Sincerely yours,

Gerald V. Sack

Gerald V. Sack
Manager, Exempt Organizations
Technical Group 4

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