200241052

Reviewer: 8/28/02
Uniform Issue List:
4942.00-00

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

Date:

Contact Person:

ID Number:

Telephone Number:

T:EO:B4

Employer Identification Number:

Legend:
A=
B=
C=
D=
E=
F=
G=
H=
I=
xx =
yy=
zz=
aa=
bb=
cc=
dd=
ee=
ff=
gg=
hh=
ii =

Dear Applicant:

We have considered the request for a ruling by subject organization (hereinafter, "Fund"), that a proposed set-aside be treated as a qualifying distribution within the meaning of section 4942(g)(2) of the Internal Revenue Code.

Fund has been recognized as exempt from federal income tax under section 501(c)(3)

of the Code and has been classified as a private foundation within the meaning of section 509(a) of the Code.

Fund is a charitable trust created at the request of A following B. Fund's primary purpose and its only activity to this time has been to support the D of E principally through F. Initially, Fund was publicly supported.

In recent years, Fund has received most of its support from investment income, and it became a private foundation. Recently, there has been a reduction both in the D's needs for support and in the annual amounts of Fund's grants. Fund had xx of undistributed dd income, yy of undistributed income for ee, zz of undistributed ff income, and aa of undistributed gg income. (These balances are the amounts which still exist after taking into account amounts distributed in the following year.) Fund expects to have bb of undistributed hh income, and cc of undistributed ii income. Fund's Trustees (three individuals and C) serve without compensation.

A second purpose of Fund is to support D of G. Based on information provided, there is a reasonable expectation that funds may be needed for such individuals by H.

Fund's Trustees, with the encouragement of A, believe that it is most appropriate and consistent with the Fund's mission and the intentions of its original donors, under the circumstances, to set aside its income to be available for other D, if and when an event similar to B occurs in the near future, and that such funds not be diverted to other purposes. Alternatively, Fund's Trustees have also agreed to set up a scholarship fund for D of I, based on both merit and need, in compliance with section 4945(d)(3) of the Code, set up by either Fund or by another entity, if an occurrence similar to B does not occur by H and will use such scholarship funds in a comparable manner.

On the basis of the foregoing, Fund requests IRS approval of Fund's plan to set aside money under section 4942(g)(2) as follows: (a) in ff, the amount up to yy of ee income that remains undistributed at the end of ff, (b) in gg, the amount up to zz of ff income that remains undistributed at the end of gg, (c) in hh, the amount up to aa of gg income that remains undistributed at the end of hh, and (d) in ii, the amount up to bb of hh income that remains undistributed at the end of ii, and also, in ii, the amount up to cc of ii income that remains undistributed at the end of ii. Such funds will be set-aside to support the D of occurrences similar to B. In the event that an event similar to B occurs before H, Fund will promptly and responsibly use the funds set-aside for such purposes, not later than the end of ii. In the event, however, that such an event similar to B does not occur before the end of ii, Fund will expend such funds for other charitable purposes consistent with its Trust Indenture, as amended, by the end of ii. Before H, Fund will study and take steps to be prepared for such an alternative distribution, including receiving a Section 4945 advance approval from the IRS for the proposed scholarship program. Fund will not ask the Service for another set-aside for similar reasons.

Section 4942(g)(2) of the Code provides that amounts set-aside for a specific charitable project may be treated as a qualifying distribution when set aside, if a 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 that the specific project for which the amount is set aside is one that can be better accomplished by the set-aside than by the immediate payment of funds.

Section 4942(g)(2)(A) of the Code provides that in all taxable years beginning on or after January 1, 1975, subject to such terms an conditions as may be prescribed by the Secretary, an amount set aside for a specific project will be treated as a qualifying distribution if it meets the requirements of subparagraph (B).

Section 4942(g)(2)(B)(i) of the Code provides that an amount set aside for a specific project shall meet the requirements of this subparagraph 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 5 years and at the time of the set-aside the private foundation establishes to the satisfaction of the Secretary that the project is one which can better be accomplished by such set-aside than by immediate payment of funds.

Section 53.4942(a)-3(b)(2) of the Foundation and Similar Excise Taxes Regulations provides that the "suitability test" prescribed by the Code is satisfied where 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, or where grants are made as part of a matching-grant program. Such projects include, for example, a plan to erect a building to house the direct charitable, educational, or other similar exempt activity of the foundation (such as a museum building in which paintings are to be hung), even though the exact location and architectural plans have not been finalized; a plan to purchase an additional group of paintings offered for sale only as a unit that requires an expenditure of more than one year's income; or 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 information submitted shows that Fund has regularly provided significant support to D of B in the past. Fund's proposed set-aside is a one-time commitment especially designed to meet the current circumstances faced by Fund and its grantees. The combination of the facts that Fund's current D of B do not currently need these funds and the fact that D may need these funds by H supports Fund's request for a set-aside. Fund's pledged support to its grantees is thus not merely part of its normal, ongoing charitable activities and therefore is distinguishable from the facts described in Rev. Rul. 75-511. We conclude that Fund has demonstrated that it can better provide the financial assistance that may be required by its potential grantees for Fund's charitable programs by a set-aside than by the immediate payment of funds. Further, Fund represents that if it establishes a scholarship program as proposed, it will acquire advance approval under section 4945(g) from the IRS and amend its trust indenture.

Accordingly, based on the prior statements, we rule that Fund's proposed set-asides meet the requirements of section 4942(g)(2) of the Code and section 53.4942(a)-3(b)(2) of the regulations. We approve the following set-asides for the following years: (These balances are the estimated amounts which still exist, or will exist, after taking into account amounts distributed in the following year.)

ee: yy
ff: zz
gg: aa
hh: bb
ii: cc

Our approval of Fund's set-aside program is based upon our understanding that Fund's set-asides will, in fact, be pledged for the specific projects indicated and in the amounts indicated; the pledge funds will be expended by H, and finally, that the estimated cost of the program will be as described. Fund will also make alternative plans on how to use such funds, including a scholarship program for D of I, and use such a program in a comparable manner. Fund will not ask the Service for another set-aside for similar reasons.

Fund's approved set-asides must be evidenced by the entry of the dollar amounts involved on its books and records as pledges or obligations to be paid by the date specified. The amounts set aside will be taken into account for purposes of determining Fund's minimum investment return under section 4942(e)(1)(A) of the Code and the income attributable to Fund's set-asides will also be taken into account in computing Fund's adjusted net income under section 4942(f).

This ruling is directed only to Fund. Section 6110(j)(3) of the Code provides that it may not be used or cited as precedent.

We are informing the Ohio Tax Exempt and Government Entities (TE/GE) Office of this ruling.

Sincerely yours,

Gerald V. Sack

Gerald V. Sack
Manager, Exempt Organizations
Technical Group 4