



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

Date:

Contact Person:

Identification Number:

UI LIST:

UI No. 4942.03-07

Telephone Number:

Employer Identification Number:

Legend:

\underline{x} = \$250,000

Dear Sir or Madam:

This is in response to your letter dated November 1, 1994, wherein you request a twenty-four month extension to pay out a set-aside approved on February 8, 1990.

Our ruling dated February 8, 1990 approved a set-aside in the amount of \underline{x} dollars for the year ended December 31, 1989 for the purpose of acquiring and rehabilitating facilities which would provide housing for distressed persons in need of a mutual support community. You represented that the set-aside would be expended within 60 months from the date of the first set-aside. However, you state that due to unforeseen difficulties you are not likely to be in a position to expend such funds within the 60-month period.

You state that prior to the set-aside request, your director determined that in order for any property to be suited for your purposes it would need to meet the following requirements:

1. The property would need to be located in or near a low-income residential area from which the mutual support community's "residents" would be drawn;
2. the property itself would need to be suitable for housing the mutual support community's residents, as well as providing adequate space for training and rehabilitation facilities; and

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3. the area in question should provide recreational and social outreach facilities, such as parks and churches, that would be easily accessible to the community's residents.

You state that you began your search for a property meeting the above criteria prior to approval of the set-aside. After an extensive search you narrowed your focus to an abandoned school building in a low-income area. However, after discussing the purchasing terms with local school officials and the vast refurbishing necessary with engineers and builders, you determined that the acquisition was extremely impractical. Another abandoned building in the same area was considered. That building was razed prior to commencement of negotiations. Due to the high crime rate in the area you focused your search to another low-income area.

You then considered a proposal from another 501(c)(3) organization in the area which shares your goals for a joint project. After the conduct of a feasibility study by the other organization it was determined that the project was impractical.

Finally, while searching for an acceptable location, you were informed that a parcel of property consisting of one whole unimproved city block located in the downtown area might be available to you. The property was located directly adjacent to a public housing project and close to schools, parks, churches and recreational facilities. Although the property itself contained no buildings, the location made it possible to simply construct the mutual support community while allowing the adjacent housing project to serve as the residence for individuals being assisted.

The property was owned by the State's Department of Transportation, which purchased it with Federal Highway Administration (FHA) funds. Due to FHA's funding of the purchase, it still holds a lien on the property. Due to this lien you would need the approval of both the State authorities and FHA. A formal proposal was presented by the Mayor of the city to the Governor. A meeting was held between your representatives, city officials, the State Department of Transportation and FHA. Even though the outcome of the meeting was very positive, the negotiations stalled at this point. The cause of the delay was the possibility of an environmental contamination problem associated with the site. Your representatives have requested that you be allowed to conduct the necessary tests, but the state has been reluctant, given the complexity of the liability issues.

This situation has created an impasse in your negotiations to purchase the property with your set-aside funds. Nevertheless, plans are currently underway for carrying out examinations to determine if contamination exists with regard to the property's water or soil, which will permit you to estimate the potential liability. However, due to the extent of the testing necessary and the sensitive nature of the negotiations at the present time, it appears unlikely that your set-aside funds will be expended within the 60 month period.

You believe this property is ideal for your use and plans have already been drawn up for its development. Your representatives are optimistic that the current problems can be resolved, allowing negotiations to continue, and that you will expend the amounts set-aside within an additional 24 months.

Section 4942(g)(2)(B)(i) of the Code provides requirements for approval of a set-aside for a specific project that will be paid out in 5 years. A foundation must establish that the project is one which can better be accomplished by such set-aside than by immediate payment of funds.

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Moreover, a set-aside which satisfies the requirements of *section 4942(g)(2)(B)(i) of the Code* may have the period to pay the set-aside amount extended if good cause is shown.

Section 53.4942(a)-3(b)(7)(i)(e) of the Foundation and Similar Excise Taxes Regulations provides that a statement showing good cause why the period for paying the amount set aside should be extended and setting forth the extension of time required must be provided.

Based on the information submitted, we conclude that you have established good cause to extend the period of time in which to pay out the set-aside amount approved on February 8, 1990. Therefore, we approve your request for a twenty-four month extension of time to pay out the set-aside amount.

This letter 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.

This letter 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 by others as precedent. 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.

Sincerely,

Robert Choi
Acting Director,
Exempt Organizations
Rulings and Agreements

Enclosure
Notice 437