Internal Revenue Service
Director, Exempt Organizations

Department of the Treasury
P.O. Box 2508 - Room 4122
Cincinnati, Ohio 45201

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Employer Identification Number:

Person to Contact - ID#:

Contact Telephone Numbers:
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UIL
4942.03.07

LEGEND

B= a state
C= a university
D= a building
E= a grant
s= a dollar figure
t= a date
u= a dollar figure
v= a dollar figure
w= a dollar figure
x= a date
y= a dollar figure

Dear :

By letter dated August 16, 2008, you requested a ruling that a set-aside in the amount of $s for the taxable year ending December 31, 2008 meets the requirements of Section 4942(g)(2)(B)(i) and accordingly constitutes a qualifying distribution under section 4942(g).

FACTS

You were incorporated under the laws of the State of B, and are exempt from federal income tax under section 501(c)(3) of the Code and classified as a private non-operating foundation under section 509(a).

You wish to set aside $s to help public university C, owned and operated by state B, fund construction of D. The set-aside will be paid into the capital construction fund for this project. D will be a 70,000-square-foot complex, located on the C campus, housing C's retailing program. In addition to a broad selection of courses emphasizing various principles employed to manage the retail supply chain, the program offers students opportunities for networking with personnel from some of the nation's top retailing firms and internship positions with some of the nation's foremost retailers and retail support businesses.

You pledged $s to university C on date t. C's ability to undertake the project depended heavily on its receipt of a matching grant, E, in the amount of $u. The matching grant was contingent on university C's achievement of its fundraising goal for the project of $v. As of date t, university C was still $w short of its goal and the matching grant was due to expire on x. Without your pledge, therefore, university C would have lost the critical matching grant, with the delay or abandonment of the project the inevitable consequence.

Your investment assets are highly illiquid, consisting mainly of commercial real estate. The cash and other relatively liquid assets which you can draw on to make grants to qualifying organizations are at all times restricted. The recent economic downturn has forced many of your small business tenants to seek temporary debt relief or deferral of rent, exacerbating your cash flow problem. At the same time you have long-standing commitments to other beneficiaries which you are determined to honor. As a consequence, it is not feasible for you to satisfy your $s pledge by a single payment in the current or any future year. Instead, you expect to pay the pledge in annual installments of $y, with the last to be made no later than December 31, 2012.

LAW

Section 4942(g)(1) of the Code defines "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; (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 within one or more purposes of section 170(c)(2)(B) may be treated as a qualifying distribution if the amount meets the requirements of section 4942(g)(2)(B).

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 the amount set aside will be paid for the specific project within five years, and the specific project is one that can better be accomplished by the set-aside of income rather than by the immediate payment of funds (the "suitability test").

Section 53.4942(a)-3(a)(2)(iii)defines as a qualifying distribution any amount set aside within the meaning of paragraph (b) of section 3.

Section 53.4942(a)-3(b)(1) of the Foundation and Similar Excise Tax Regulations provides that the amounts of income set aside for a specific project for one or more of the purposes in section 170(c)(1) or 170(c)(2)(B) of the Code may be treated as qualifying distributions for the tax year(s) in which such amounts are set aside (but not in the tax year in which actually paid) if the requirements of section 4942(g)(2) and paragraph (b)are satisfied. The requirements of paragraph (b) are satisfied if the foundation establishes to the satisfaction of the Commissioner the amount set aside will be paid for the specific project within 60 months after it is set aside, and (i) the set-aside otherwise meets the suitability test of section 53.4942(a)-3(b)(2) or (ii) the foundation satisfies the cash distribution test.

Section 53.4942(a)-3(b)(2) of the regulations provides that the suitability test for a set-aside is met if the foundation establishes 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 erect a building to house a direct charitable, educational, or similar exempt activity of the foundation.

Section 53.4942(a)-3(b)(7)(i) provides that a private foundation must obtain Internal Revenue Service approval of its set-aside of income under the suitability test by applying before the end of the tax year in which the amount is set aside.

In Revenue Ruling 77-7, 1977-1 CB 354, the term "specific project" as defined in section 53.4942(a)-3(b)(2) of the Excise Tax Regulations was held to include a building project to be undertaken by a public charity unrelated to the foundation making the set-aside.

ANALYSIS

You have sought timely approval of your set-aside of income in accordance with Section 53.4942(a)-3(b)(7)(i).

As required by Section 4942(g)(2)(A) of the Code and Section 53.4942(a)-3(b)(1) of the Regulations, your proposed set-aside will be used to accomplish purposes described in section 170(c)(2)(B) of the Code, namely, for the construction and operation of a facility for a public university, exclusively devoted to the educational activities of the same.

You have credibly represented that the amount set-aside for this specific project will be paid out within 60 months from the set-aside, as required by section 4942(g)(2)(B)(i) of the Code and section 53.4942(a)-3(b)(1) of the regulations.

Your project is one that can better be accomplished by the set-aside of income rather than by the immediate payment of funds. The "specific project" is a building project undertaken by an educational entity unrelated to you, which is an agency or instrumentality of the State of B. Similarly, Revenue Ruling 77-7 held that a building project undertaken by a "public charity" was a "specific project". In the language used by section 53.4942(a)-3(b)(2) of the regulations, your 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": You have ensured that the specific project will go forward, but only by committing yourself to a level of support which you cannot sustain except by payment in equal installments over the space of four years. Your project therefore satisfies the suitability test as set forth in Section 4942(g)(2)(B)(i)of the Code and Section 53.4942(a)-3(b)(2)of the Regulations.

RULING

Based on the foregoing, The set-aside of $s for the taxable year ending December 31, 2008, meets the requirements of Section 4942(g)(2)(B)(i) and accordingly constitutes a qualifying distribution under section 4942(g).

We direct your attention to Section 53.4942(a)-3(b)(8) of the regulations, entitled "Evidence of Set-Aside." This section provides that any set-aside approved by the Internal Revenue Service shall be evidenced by the entry of a dollar amount in the books and records of a private foundation as a pledge or obligation to be paid at a future date or dates. Further, the amount of the set-aside must be taken into account in determining the foundation's minimum investment return (see section 53.4942(a)- 2(c)(1) of the regulations), and any income attributable to a set-aside must be taken into account in computing adjusted net income (see section 53.4942(a)-2(d) of the regulations).

This ruling is based on the understanding there will be no material changes in the facts upon which it is based. Any changes that may have a bearing on your tax status should be reported to the Internal Revenue Service. This ruling does not address the applicability of any section of Code or regulations to the facts submitted other than with respect to the sections described.

This ruling letter is directed only to the organizations that requested them. Section 6110(k)(3) of the Code provides that they may not be used or cited as precedent.

Please keep a copy of this ruling letter in your permanent records.

A copy of this ruling has been sent to your designated representative.

If you have any questions about this ruling, please contact the persons whose name and telephone number are shown above in the heading of this letter.

Sincerely yours,

Robert Choi
Director, Exempt Organizations
Rulings and Agreements