



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

Number: **201420023**
Release Date: 5/16/2014

Date: February 21, 2014

Contact Person:

Identification Number:

Telephone Number:

Employer Identification Number:

UIL: 4943.03-00

Legend:

Corporation =
Bank =
Law Firm =
Family =
Number =
Person 1 =
Company 1 =
Company 2 =
Company 3 =
Company 4 =
Company 5 =
Company 6 =
Company 7 =
Dollar Amount =
Date 1 =
Date 2 =
Date 3 =
Year 1 =
Year 2 =
Year 3 =
Year 4 =
Year 5 =

Dear :

This is in response to your ruling request dated July 26, 2012, requesting an extension for an additional five years under §4943(c)(7) of the Internal Revenue Code ("Code") for disposing of certain excess business holdings.

FACTS

You are a private foundation organized as a corporation. You have been recognized as an

organization exempt under §501(c)(3) of the Code and are classified as a private foundation within the meaning of §509(a). On Date 1 you received a gift of Number shares of Corporation stock from Person 1, who you represent is a disqualified person with respect to you. In addition, you represent that your ownership interest constitutes excess business holdings under §4943(c)(1). Your initial five-year period for disposing of excess business holdings ended on Date 2.

At the time of the donation, Person 1 contemplated that all the shares of Corporation stock would be sold to a third party in the very near future.

In furtherance of that goal and before Date 1, Corporation had already entered into a letter of understanding with Bank to act as its sole financial advisor to sell at least 50% of its stock, business or assets in a single transaction or a series of transactions. Bank prepared a confidential offering memorandum describing Corporation so that parties could decide whether they wanted to attempt to acquire Corporation. In addition, Bank identified a list of parties that might be interested in acquiring Corporation.

Based on the documents prepared by Bank, Bank received several preliminary, non-binding letters of interest from potential purchasers of Corporation indicating estimates of the purchase price they might be willing to pay along with other proposed terms of the transaction. In addition, Corporation hired Law Firm to prepare a stock purchase agreement which specifies the terms that would be used if the shareholders of Corporation sell 100% of the issued and outstanding shares of capital stock of Corporation. The body of the draft stock purchase agreement indicates that Corporation expected to sell its business in Year 1, the calendar year following the year in which you received the gift of Corporation shares.

Negotiations with potential purchasers who had provided letters of interest continued, until negotiations stopped as a result of the financial crisis of Year 1. Corporation received additional letters of interest during Year 1 from Company 1, Company 2, and Company 3 and attempted to negotiate deals for the sale of all of its shares, including the shares owned by you, with each of these companies. A negotiation with Company 1 fell through because the offered amount was well below the fair market value of Corporation as determined within the previous 6 months and was well below the values mentioned in the letters of intent received during the previous calendar year. A negotiation with Company 2 ended because the offering price was below fair market value, and Company 2 was unable to obtain financing for the offer it made. A negotiation with Company 3 also fell through because the offering price was below fair market value.

Corporation received a letter of intent from Company 4 in Year 2. A negotiation with Company 4 fell through because the offering price was substantially below fair market value.

Corporation received a letter of intent from Company 5 in Year 3. This letter of intent provided for a purchase price of Dollar Amount. Dollar Amount was less than half of the previously determined value and was substantially lower than the value the shareholders of Corporation believed was fair. Company 5 indicated during negotiations that lack of access to capital was the reason their offer was not more attractive. The offer from Company 5 was the highest offer that Corporation received for its shares during Year 1, Year 2, Year 3, and Year 4.

Corporation received a letter of intent from Company 6 in Year 4. Company 6 was not able to make a cash offer at all, and the stock transaction it offered was significantly below fair market value as determined by the shareholders of Corporation.

During Year 3 and Year 4, Corporation had some decline in profits and revenue. Also during that time, it invested in technology and equipment and expanded into a new portion of the market. Corporation does not believe that its changes in profits and revenue justify a decline of fair market value of over 50%, especially because of its investment in capital equipment and expansion into a new market for its products.

Corporation is currently in touch with Company 7 and various venture capital companies in ongoing attempts to sell the shares of Corporation, but no offers have been generated from this contact yet.

You represented that disposition of the Corporation stock within the initial five-year period is not possible, except at a price substantially below fair market value.

Your directors expect that they can dispose of the Corporation stock no later than Date 3. You submitted the plan to your appropriate state Attorney General and are waiting for a response. If and when a response is received from the Attorney General, a copy will be submitted to this office in accordance with §4943(c)(7)(B)(ii).

Prior to the end of the initial five-year period for disposing of excess business holdings under §4943(c)(6), you submitted a request to the Internal Revenue Service for an extension of five years to complete the required disposition.

RULING REQUESTED

You requested a ruling extending the five-year period of time for disposing of excess business holdings for an additional five years under §4943(c)(7).

LAW

Section 4943(a)(1) of the Code imposes excise taxes on the excess business holdings of any private foundation in a business enterprise.

Section 4943(c)(1) of the Code provides that the term "excess business holdings" means, with respect to the holdings of any private foundation in any business enterprise, the amount of stock or other interest in the enterprise which the foundation would have to dispose of to a person other than a disqualified person in order for the remaining holdings of the foundation in such enterprise to be permitted holdings.

Section 4943(c)(2) of the Code provides in part that the permitted holdings of any private foundation in an incorporated business enterprise are 20 percent of the voting stock, reduced by the percentage of the voting stock owned by all disqualified persons.

Section 4943(c)(6)(A) of the Code provides that, if there is a change in the holdings in a business enterprise (other than by purchase by the private foundation or by a disqualified person) which causes the private foundation to have excess business holdings in such enterprise, the interest of the foundation in such enterprise (immediately after such change) shall (while held by the foundation) be treated as held by a disqualified person (rather than by the foundation) during the 5-year period beginning on the date of such change in holdings.

Section 4943(c)(7) of the Code provides that the Internal Revenue Service may extend for an additional five years the initial five-year period for disposing of excess business holdings in the case of an unusually large gift or bequest of diverse business holdings or holdings with complex corporate structures if:

(A) The foundation establishes that: (i) it made diligent efforts to dispose of such holdings during the initial five-year period, and (ii) disposition within the initial five-year period has not been possible (except at a price substantially below fair market value) by reason of such size and complexity or diversity of holdings;

(B) Before the close of the initial five-year period: (i) the private foundation submits to the Internal Revenue Service a plan for disposing of all of the excess business holdings involved in the extension, and (ii) the private foundation submits the plan to the Attorney General (or other appropriate State official) having administrative or supervisory authority or responsibility with respect to the foundation's disposition of the excess business holdings involved and submits to the Internal Revenue Service any response the private foundation received during the five-year period; and

(C) The Internal Revenue Service determines that such plan can reasonably be expected to be carried out before the close of the extension period.

ANALYSIS

You are subject to §4943, which imposes a tax on the excess business holdings of private foundations. Generally, under §4943(c)(2)(A), a private foundation and its disqualified persons are permitted to hold twenty percent of the voting stock in a business enterprise, with any excess constituting excess business holdings. However, if a private foundation acquires holdings in a business enterprise other than by purchase (e.g., by gift) which causes the foundation to have excess business holdings, then the interest of the foundation in such business enterprise shall be treated as held by a disqualified person (rather than the foundation) for a five-year period beginning on the date such holdings were acquired by the foundation, under §4943(c)(6)(A).

Under §4943(c)(7), the Internal Revenue Service may extend the initial five-year period for disposing of excess business holdings for an additional five years if a foundation establishes that: (i) it made diligent efforts to dispose of such holdings during the initial five-year period, and disposition within the initial five-year period has not been possible (except at a price substantially below fair market value) by reason of such size and complexity or diversity of holdings, (ii) before the close of the initial five-year period it submits to the Internal Revenue Service and Attorney General (or other appropriate State official) having administrative or

supervisory authority or responsibility with respect to the foundation's disposition of the excess business holdings involved a plan for disposing of all of the excess business holdings involved during the extension and (iii) the Internal Revenue Service determines that such plan can reasonably be expected to be carried out before the close of the extension period.

You received a gift of Corporation stock from Person 1, a disqualified person under §4946. You have stated that the holdings of Corporation stock that you own constitute excess business holdings under §4943(c)(1). Therefore, you were required under §4943(c)(6) to dispose of these holdings during the initial five-year period ended on Date 2.

You represent that you and the other shareholders of Corporation stock have made diligent efforts to dispose of the Corporation stock during the five-year period after you received your shares. Even though the financial crisis of Year 1 made the financing of such sales very difficult, you and the other shareholders of Corporation continued to negotiate with a variety of companies that showed interest in purchasing the shares.

However, due to nature of your holdings and the current market for disposing of interests in a closely-held company, you have been unable to dispose of the Corporation stock. You represented that disposition of the Corporation stock within the initial five-year period was not possible, except at a price substantially below fair market value, as required by §4943(c)(7)(A)(ii). Before the end of the initial five-year period, you submitted a request to the Internal Revenue Service under §4943(c)(7) for an additional five-year period within which to dispose of your Corporation stock and you described your plan for disposing of Corporation stock. You also submitted the plan to the Attorney General of your state, who is expected to approve the plan. Thus, based on the information submitted, we have determined that your plan to dispose of all of your Corporation stock within an additional five-year period can reasonably be expected to be carried out. Therefore, we conclude that you meet the requirements under §4943(c)(7) for an extension of five years to dispose of your Corporation stock.

RULING

Under §4943(c)(7), the period during which you may dispose of your Corporation stock is extended an additional five years, until Date 3.

We are not ruling on whether your interest in Corporation constitutes excess business holdings.

This ruling 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 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 by others as precedent.

This ruling is based on the facts as they were presented and on the understanding that there will be no material changes in these facts. This ruling does not address the applicability of any section of the Code or regulations to the facts submitted other than with respect to the sections described. Because it could help resolve questions concerning your federal income tax status, this ruling should be kept in your permanent records.

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.

In accordance with the Power of Attorney currently on file with the Internal Revenue Service, we are sending a copy of this letter to your authorized representative.

Sincerely,

Stephen M. Clarke
Manager, Exempt Organizations
Guidance Group 1

Enclosure
Notice 437

cc: