



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

Number: **201510056**
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Contact Person:

Identification Number:

Date: December 9, 2014

Telephone Number:

UIL: 4943.00-00

Legend:

<u>State</u>	=
<u>Foundation1</u>	=
<u>Foundation2</u>	=
<u>Trust</u>	=
<u>Year1</u>	=
<u>Date1</u>	=
<u>Date2</u>	=
<u>Date3</u>	=
<u>Date4</u>	=
<u>Date5</u>	=
<u>Date6</u>	=
<u>H</u>	=
<u>J</u>	=
<u>K</u>	=
<u>L</u>	=
<u>M</u>	=
<u>X</u>	=

Dear :

This is in response to your letter dated September 17, 2014, requesting an extension for an additional five years under section 4943(c)(7) of the Internal Revenue Code ("Code") for the disposition of certain excess business holdings.

FACTS

Foundation1, a now dissolved State nonprofit corporation and private foundation described in section 501(c)(3), received a distribution from Trust upon the death of the grantor, of \$x worth of assets and ownership in various business enterprises. These enterprises comprised an unusually large bequest of diverse and complex holdings.

The information provided shows that Foundation1 received these ownership interests, "other than by purchase" from the Trust within the meaning of section 4943(c)(6)(A), the ownership of the interests in the business enterprises were treated as held by a disqualified person beginning on the date when they were distributed by the Trust to Foundation1.

In Year1, the board of directors of Foundation1 restructured its ownership of interests in various business enterprises and then bifurcated into two new private foundations, Foundation2 and you. As a result of the bifurcation and restructuring, you and Foundation2 acquired ownership of certain business enterprises including: H, J, K, and L (J and L are wholly-owned by M). Each of these owns development real estate and is in the business of selling real estate to homebuilders and other developers.

Such distribution constitutes a "significant disposition of assets to one or more private foundations" within the meaning of Treas. Reg. § 1.507-3(c)(2). Under Treas. Reg. § 1.507-3(a)(6), if a private foundation makes a section 507(b)(2) transfer of all or part of its net assets to another private foundation, the applicable period of time described in section 4943(c)(4), (5) or (6) shall include both the period during which the transferor foundation held such assets and the period during which the transferee foundation holds such assets.

As these are potential excess business holdings, during the initial period for disposition, you have undertaken diligent efforts to dispose of the ownership interests in various business enterprises and the underlying assets in H, J, K, L, and M.

H and K are both State corporations that are each currently developing a real estate project. H and K will undertake significant efforts to continue to market the projects by working with third-party builders and real estate brokers. H anticipates that, by the end of the initial five-year divestment period, it will have disposed of most of its project's assets. H indicates it will complete its disposition of the remainder of its project's assets and dissolve by Date4. K anticipates that, by the end of the initial five-year divestment period, it will have disposed of a portion of its project's assets. K indicates that it will complete its disposition of the remainder of its project's assets and dissolve by Date6.

J and L are both State limited liability companies that are each currently developing a real estate project. J and L will increasingly work more closely with local authorities in order to acquire the necessary permits to subdivide and sell real estate as well to convert some real estate to civic use. J anticipates that, by the end of the initial five-year divestment period, it will have disposed of a significant portion of its project's assets. J indicates that it will complete its disposition of the remainder of its project's assets and dissolve by Date4. L anticipates that, by the end of the initial five-year divestment period, it will not have disposed of any of its project's assets. L indicates that it will complete its disposition of its project's assets and dissolve by Date6.

Due to the dramatic downturn in demand for real estate in specific markets in which these enterprises operate and the lack of financing for large tracts of raw undeveloped real estate, conditions that have persisted for years, disposition of real estate assets has not been possible except at prices substantially below fair market value. In order to divest your ownership interest in the business enterprises, you must first sell the underlying assets.

On behalf of each of the enterprises involved in this transaction, you have submitted a detailed description of their activities with respect to the sale of their real estate holdings and their plans for eventual dissolution by the end of the additional five-year divestment period. The plan involves continued efforts to complete the divestment as described above. You represent that each of these divestment plans may be reasonably expected to be complete within the additional five-year period.

Prior to the end of the initial five-year period for disposing of excess business holdings under section 4943(c)(6), you submitted a request to the Internal Revenue Service for an extension of five years to complete the required disposition. In addition, you submitted your plan and notified the State Attorney General.

RULING REQUESTED

You have requested the following ruling:

Pursuant to the authority provided under section 4943(c)(7), you request that you be granted five-year extensions to dispose of your ownership interests in the following enterprises:

- (i) with respect to your ownership interest in H, you request that you be granted a five-year extension from Date3 to Date4 to dispose of such interest;
- (ii) with respect to your indirect ownership interest in J and the related portion of your ownership interest in M, you request that you be granted a five-year extension from Date3 to Date4 to dispose of such ownership interests;
- (iii) with respect to your ownership interest in K, you request that you be granted a five-year extension from Date5 to Date6 to dispose of such ownership interest;
- (iv) with respect to your indirect ownership interest in L, and the related portion of your ownership interest in M, you request that you be granted a five-year extension from Date5 to Date6 to dispose of such ownership interests.

LAW

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

Section 4943(c)(1) provides that the "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) 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)(3)(A) provides that the permitted holdings of a private foundation in any business enterprise which is not incorporated shall be determined under regulations prescribed by the Secretary. Such regulations shall be consistent in principle with paragraphs (2) and (4), except that in the case of a partnership or joint venture, "profits interest" shall be substituted for "voting stock", and "capital interest" shall be substituted for "nonvoting stock."

Section 4943(c)(6)(A) 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) provides that the Internal Revenue Service may extend for an additional five years the initial five-year period for the disposition 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 section 4943, which imposes a tax on the excess business holdings of private foundations. Generally, under sections 4943(c)(2) and 4943(c)(3)(A), a private foundation is permitted to hold 20 percent of the voting stock or profit interest 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., bequest) 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 section 4943(c)(6)(A).

Under section 4943(c)(7), the Internal Revenue Service may extend the initial five-year period for the disposition of excess business holdings for an additional five years if you establish that: (i) you made diligent efforts to dispose of such holdings during the initial five-year period, and disposition within the 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, you submit to the Internal Revenue Service and Attorney General (or other appropriate state official) having administrative or supervisory authority or responsibility with respect to your disposition of the excess business holdings, a plan for the disposition 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 acquired from Foundation1, ownership in H, J, K, L and M. You acknowledge that you have excess business holdings in each of these enterprises under section 4943(c)(1). Therefore, you are required under section 4943(c)(6) to dispose of these holdings during the initial five-year period applicable to each enterprise described above. During the initial period, you have made diligent efforts to divest the excess business holdings.

On behalf of each of the enterprises involved in this transaction, you have submitted a detailed description of their activities with respect to the sale of their real estate holdings and their plans for eventual dissolution by the end of the additional five-year divestment period.

Before the end of the initial five-year period, you submitted this to the Internal Revenue Service under section 4943(c)(7) for an additional five-year period within which to dispose of your excess business holdings in the above-described enterprises, and you described your plan for disposition of these holdings. You also submitted the plan to the Attorney General of State.

Based on the information submitted, we have determined that your plan to dispose of your excess business holdings in the enterprises involved within an additional five-year period can reasonably be expected to be carried out. Therefore, we conclude that you do meet the requirements under section 4943(c)(7) for an extension of five years to dispose of your excess business holdings in the enterprises described above.

RULING

Under section 4943(c)(7), you are granted five-year extensions to dispose of your ownership interests in the following enterprises:

- (i) with respect to your ownership interest in H, you request that you be granted a five-year extension from Date3 to Date4 to dispose of such interest;
- (ii) with respect to your indirect ownership interest in J and the related portion of your

ownership interest in M, you request that you be granted a five-year extension from Date3 to Date4 to dispose of such ownership interests;

(iii) with respect to your ownership interest in K, you request that you be granted a five-year extension from Date5 to Date6 to dispose of such ownership interest;

(iv) with respect to your indirect ownership interest in L, and the related portion of your ownership interest in M, you request that you be granted a five-year extension from Date5 to Date6 to dispose of such ownership interests.

We are not ruling on whether your interests in any of the enterprises described above constitute excess business holdings.

This ruling will be made available for public inspection under section 6110 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) 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,

Michael Seto
Manager, EO Technical

Enclosure
Notice 437