TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

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Contact Person:

Identification Number:

Telephone Number:

Employer Identification Number:

Legend:

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K =
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Dear :

This is in reply to your letter of October 13, 2004, requesting a five year extension under the provisions of section 4943(c)(7) of the Internal Revenue Code of the period within which a private foundation normally is allowed to dispose of excess business assets acquired by gift.

FACTS:

You have been recognized as exempt under section 501(c)(3) of the Code and are a private foundation within the meaning of section 509(a).

You and your disqualified persons own substantial numbers of common stock in J, a publicly traded company listed on the NASDAQ exchange. As of November 29, 2004, taxpayer and disqualified persons held the following numbers of shares, out of z outstanding common shares:

A	:	2,838,107	18 percent
B		2,607,018	16 percent
C		3,918,850	24 percent
D		529,933	3 percent
E		69,718	0 percent
F		709,901	4 percent
G		709,903	4 percent
H		5,000	0 percent
I		5,000	0 percent

On December 17, 1999, K, a member of taxpayer's founding L family, gifted you 2,000,000 shares of common stock of J. The day before you received 108,359 shares of common stock of J from the Lead Trust created by a member of the L family. You own an additional 729,745 shares of common stock of J received as additional distributions from such Lead Trust.

You filed a ruling request for a five year extension of time to dispose of sufficient shares to comply with Section 4943 on August 24, 2004. Because of certain procedural defects, the ruling request was refiled in late October, 2004. The five year period for disposing of sufficient stock to comply with Section 4943 expired on December 16, 2004. However, on October 3, 2004, you sent a letter stating that "We would like to modify our request from a 5-year extension to a 90-day extension."

On December 1, 2004, you sent a letter indicating that for some time you were trying to sell all your J stock in a single transaction, and during that process were prohibited by SEC rules from selling stock on the open market as the company is a publicly traded company. The letter indicated that if the sale in a single transaction was not completed, the disposition of your J stock on the open market "could take up to 3 and 3/4 years."

On January 26, 2005, you sent a letter indicating that you had conducted an auction for the sale of all of its stock, and had received a bid of $3.05 per share. The letter went on to state that on January 6, 2005, J put out its earnings report for its fourth quarter and fiscal year ended October 30, 2004, and the report "was very well received by the market with the result that the stock in succeeding days traded as high as x per share," almost double the price at which the stock traded immediately before the auction. You therefore determined not to sell all its stock to the winning bidder at the $3.05 bid price.

Subsequently, you commenced sales in the marketplace and as of January 26, 2005, sold 54,000 shares, of which the last 3,000 shares were sold at a price of x per share. The January 26 letter stated that "The Foundation will continue to sell as many shares on a daily or weekly basis as will not violate the Company's insider trading policies or unduly undercut the trading value of the shares." No date or plan of disposition has been received from you.

In the months since January, the J stock price has dropped significantly, reportedly due to lower earnings reported in early March 2005. According to published sources, in the 52 weeks ended August 17, 2005, its stock price has ranged from a high of y to a low of w.

On May 10, 2005, a conference was held with your representatives. In late July, 2005, further telephone conferences were held with your representative. You repeated your position that sales of J stock on the open market would require several years' time in order to avoid reducing the price of the stock. No plan of disposition was provided. At that time, representatives of the Service orally advised your representative that reduction in the price of the stock, without a specific plan of disposition, did not constitute a basis for granting a five year extension of time.

LAW:

Section 501(c)(3) of the Code exempts from Federal income tax organizations organized and operated exclusively for charitable or educational purposes.

Section 509(a) of the Code provides that, unless specifically accepted, a domestic or foreign organization described in section 501(c)(3) is a private foundation and subject to the excise taxes of Chapter 42.

Section 4943(a) of the Code imposes a tax on the excess business holdings of any private foundation in a business enterprise during any taxable year.

Section 4943(c)(1) of the Code defines the term excess business holdings as meaning 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)(A) of the Code provides that the permitted holdings of any private foundation in an incorporated business enterprise are:

(i) 20 percent of the voting stock, reduced by

(ii) the percentage of the voting stock owned by all disqualified persons.

Section 4943(c)(2)(C) of the Code provides that a private foundation shall not be treated as having excess business holdings in any corporation in which it (together with all other private foundations which are described in section 4946(a)(1)(H)) owns not more than 2 percent of the voting stock and not more than 2 percent in value of all outstanding shares of all classes of stock.

Section 4943(c)(6)(A) of the Code provides that, with certain exceptions not applicable here, if after May 26, 1969, there is a change in the holdings in a business enterprise (other than by purchase, i.e., by gift or bequest) 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 Secretary may extend for an additional 5 year period the period under subparagraph (6) 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) diligent efforts to dispose of such holdings have been made within the initial 5-year period, and

(ii) disposition within the initial 5-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 such holdings,

(B) before the close of the initial 5-year period --

(i) the private foundation submits to the Secretary a plan for disposing of all of the excess business holdings involved in the extension, and

(ii) the private foundations submits the plan described in clause (i) 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 Secretary any response received by the private foundation from the Attorney General (or other appropriate State official) to such plan during such 5-year period, and

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

Section 53.4943-4(d)(4)(A) of the Foundation and Similar Excise Tax Regulations provides that in general, when the percentage of the holdings in a business enterprise held by a private foundation and all disqualified persons together or when the percentage of the holdings of a private foundation alone in such business enterprise deceases such holdings may not be increased.

Section 53.4943-3(b)(4)(i) of the regulations provides that a private foundation is not treated as having excess business holdings in any incorporated business enterprise in which it (together with all other private foundations described in section 4946(a)(1)(H) actually or constructively owns not more than 2 percent of the voting stock and not more than 2 percent in value of all outstanding shares of all classes of stock. If, however, the private foundation, together with all other private foundations described in section 4946(a)(1)(H) actually or constructively owns more than 2 percent of either the voting stock or the value of the outstanding shares of all classes of stock in any incorporated business enterprise, all the stock in such business enterprise classified as excess business holdings under section 4943 is treated as excess business holdings. For purposes of this paragraph, any stock owned by a private foundation which is treated as held by a disqualified person under section 4943(c)(4)(B), (5) or (6) shall be treated as actually owned by the private foundation.

Section 4946(a)(1)(H) of the Code provides that for the purposes of section 4943 the term disqualified person includes a private foundation which is effectively controlled (directly or indirectly) by the same person or persons who control the private foundation in question, or one where substantially all of the contributions were made (directly or indirectly) by the same persons to include a substantial contributor or a member of their family.

ANALYSIS:

The information submitted establishes that K gave you a large number of shares of stock in J and under the provisions of section 4943(c)(6)(A) you were required to dispose of these shares of stock within 5 years in order to avoid being placed in a position of having excess business holdings. You were unable to dispose of an adequate number of shares of stock within the allotted five year period. Accordingly, you requested an additional five-year period of time within which to dispose of these shares.

You have failed to provide a plan of disposition that can reasonably be expected to be successfully carried out by the end of any five year extension period. In January 2005, you had a bidder willing to purchase all of your J stock, but you turned down that bid on the basis of an increase in the market price of J stock based on fiscal 2004 financial results. You have not provided any specific plan to sell the Foundation's stock as a block.

Accordingly, based on the information you have submitted, we rule that your plan to dispose of your excess business holdings cannot reasonably be expected to be carried out before the close of the year after the expiration of the initial five year period within which you are required to dispose of your excess business holdings obtained by gift. By this ruling we grant you to and including March 31, 2006, to dispose of sufficient shares of J stock to comply with Code Section 4943.

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.

Because this letter could help resolve any questions about your exempt status, you should keep it 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.

Sincerely,

Mary Jo Salins
Acting Manager, Exempt Organizations
Technical Group 2

Enclosure: Notice 437