



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

Number: **201028044**
Release Date: 7/16/2010

Date: April 20, 2010

U.I.L.: 4943.03-04

Contact Person:

Identification Number:

Telephone Number:

Employer Identification Number:

Legend:

Foundation =
State =
Corporation =
Date =

Dear _____ :

We have considered your ruling request dated October 14, 2009. You requested a five-year extension of time until Date for disposing of certain excess business holdings.

FACTS

You are a non-profit trust recognized as exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code of 1986, as amended (to which all subsequent section references are made unless otherwise indicated). You are classified as a private foundation under section 509(a).

You own shares of stock of Corporation. Corporation is a large, U.S.-based, publicly traded corporation. Nearly all of the shares you own were received by you from a charitable lead annuity trust that was established by one of your founders, and a very small number were received as stock dividends on shares that you owned at the time that the dividends were declared. You have never acquired any shares by purchase.

At the time that you received your shares from the trust, they did not constitute excess business holdings because the combined holdings of you and your disqualified persons were less than 20 percent of Corporation's outstanding shares. However, since the

second half of ~~xxx~~, an increasing portion of the combined holdings has exceeded the 20-percent level because Corporation has engaged in repurchasing its shares on the open market. At the time that Corporation began to repurchase its shares, it was not apparent whether Foundation would continue to have excess business holdings or whether Corporation might issue additional shares, thereby reducing Foundation's holdings to permitted levels. However, Foundation's excess holdings have continued to increase as Corporation has continued to repurchase shares.

In recognition of its excess business holdings situation, over two years ago, Foundation's governing body approved a plan for the disposition of a sufficient number of shares for its remaining shares not to be considered excess business holdings. However, before the plan could be implemented and executed, the price of Corporation's shares declined by more than 50 percent, along with the general stock market decline that began in late 2007. The economic conditions that led to the general decline in stock market prices directly adversely affect most of Corporation's principal business activities.

The economic downturn and associated stock market decline caused Foundation to reexamine its plan for disposition of Corporation shares, looking for alternative approaches to avoid the tax imposed by section 4943. None of the possible alternative approaches were found to be satisfactory.

The timing of dispositions of Corporation shares by Foundation is affected by limitations imposed by federal securities laws and limitations imposed by Corporation on all substantial shareholders to assure compliance with securities laws.

To avoid selling the necessary number of shares at substantially reduced prices, and to comply with federal securities laws, Foundation in ~~yyy~~ adopted a new disposition plan that it believes is compliant with Rule 10b-5 under the Securities Exchange Act of 1934 and other securities laws. The new plan is designed to dispose of sufficient shares by Date to avoid the imposition of any tax under section 4943.

Your request for a five-year extension of the five-year period under section 4943(c)(6) of the Code for disposing of excess business holdings was submitted prior to the end of that period. In your request, you explained the difficulties you encountered, as summarized briefly above, in disposing of Corporation shares prior to the end of the section 4943(c)(6) five-year period. You also described your new plan to dispose of a sufficient number of your Corporation shares within an additional five-year period to avoid possessing any excess business holdings. You submitted the new plan to State's Attorney General. You do not expect to receive a response from the Attorney General, but if you do, you will provide a copy of it to this office.

RULING REQUESTED

Under section 4943(c)(7), the period during which Foundation may dispose of its Corporation shares will be extended an additional five years to Date.

LAW

Section 4943 imposes an excise tax on the excess business holdings of any private foundation in a business enterprise.

Section 4943(c)(1) defines the term "excess business holdings" to mean, 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 for the remaining holdings of the foundation in such enterprise to be permitted holdings.

Section 4943(c)(2)(A) provides that the permitted holdings of any private foundation in any 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)(6)(A) 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 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 IRS may extend for an additional five years the initial five-year period under section 4943(c)(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) 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 IRS 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 IRS any response the private foundation receives during the five-year period; and

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

ANALYSIS

You are a private foundation described in section 509(a) and subject to section 4943. You received a large number of Corporation shares from a charitable lead annuity trust established by one of your founders. The shares that you hold became excess business holdings because Corporation began repurchasing its shares on the open market, thereby reducing the number of outstanding shares and increasing your percentage of the remaining outstanding shares. Under section 4943(c)(6)(A) these shares are treated as held by a disqualified person, rather than Foundation, for a five-year period.

During the section 4943(c)(6) five-year period, you have made diligent efforts to dispose of these shares. However, due to securities law requirements limiting the timing and number of shares that could be sold and due to the substantial decline in the market value of the shares relating to recent economic conditions, you have been unable to dispose of all your shares, except at a price substantially below what you believe to be their fair market value.

Before the end of the initial five-year period, you submitted a request to the IRS under section 4943(c)(7) for an additional five-year period within which to dispose of your Corporation shares. In your request, you described your plan for disposing of all your shares within an additional five-year period. You also submitted the plan to the Attorney General of State, from whom no response is expected, although if a response is received, you will send a copy to this office.

Based on the information submitted, we have determined that your plan to dispose of a sufficient number of your Corporation shares to eliminate any excess business holdings within an additional five-year period can reasonably be expected to be carried out. Therefore, we conclude that you meet the requirements under section 4943(c)(7) for an extension of five years to dispose of the necessary number of your Corporation shares.

RULING

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

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 the sections described. Because it could help resolve questions concerning your federal income tax status, this ruling should be kept in your permanent records.

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 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.

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,

Andrew F. Megosh
Acting Manager, Exempt Organizations
Guidance Group 2

cc:

Enclosure: Notice 437