



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

Number: **201220037**  
Release Date: 5/18/2012

Date: February 24, 2012

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Contact Person:

Identification Number:

Telephone Number:

Employer Identification Number:

Uniform Issue List

4943.00-00

Legend:

Settlor =  
Company =  
Date 1 =  
Date 2 =  
Date 3 =  
Date 4 =  
Date 5 =  
Date 6 =  
Date 7 =  
Date 8 =  
Date 9 =  
Date 10 =  
Date 11 =  
Date 12 =

Dear :

This is in response to your ruling request regarding federal tax consequences under various sections of the Internal Revenue Code of the proposed transactions described below.

**FACTS**

You were formed as a charitable trust, recognized as an organization described in § 501(c)(3) Internal Revenue Code, and classified as a supporting organization described under § 509(a)(3) prior to the enactment on August 17, 2006 of the Pension Protection Act of 2006, Pub. L. No. 109-280, 120 Stat. 780 (the "Act"). You were created by Settlor to support one or more

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organizations described under § 509(a)(1) or (2). Specifically, you are engaged primarily in investing and managing non-exempt use property and making grants to your supported organizations. Your supported organizations are five specified organizations that have been recognized as organizations described in § 501(c)(3) and they are classified as public charities under §§ 509(a)(1) and (a)(2). Your support of these organizations is contingent upon their continuing to be classified by the Internal Revenue Service ("Service") as public charities.

As a result of the amendments made by the Act and the Proposed Treasury Regulation § 1.509(a)-4(1)(4)(ii), you stipulate that you are a non-functionally integrated Type III supporting organization (assuming that the final regulations do not substantially change the definition) and thus are treated as a private foundation that is subject to the excess business holdings rules of § 4943 effective for tax years beginning after August 17, 2006. You stipulate that § 4943 applies to your tax year beginning Date 1.

You represent that you and all of your disqualified persons with respect to you, on August 17, 2006, together held more than 75 percent of the Company's voting stock. These holdings, which might qualify for the present holdings provisions under § 4943(f)(7) and 4943(c)(4), are not the focus of this ruling.

Since August 17, 2006, you have come to own all the voting stock of the Company, by reason of its redemptions of the voting stock held by others. You received your initial interest in the Company as a result of a large bequest from Settlor. That bequest from Settlor was unusually large with an estimated value at that time of over twenty million dollars. The remaining stock was owned by individuals and the Company's Employee Stock Ownership Plan ("ESOP"). The participants of ESOP consisted of the Company's employees. You represent that ESOP participants had "put option" rights and as such, could compel the Company to redeem the Company's voting stock that is distributable to the ESOP participants. After August 17, 2006, the Company continued to redeem shares from the ESOP periodically, as required. These redemptions further increased your percentage interest in the Company's voting stock. The ESOP participants exercised their put options on Date 2, Date 3, Date 4 and Date 5. On Date 6, the Company terminated the ESOP by redeeming all of the remaining shares held by the ESOP. The ESOP's cash assets were then distributed to the ESOP participants. You represent that you and your disqualified persons did not transfer cash or other property (or make or guarantee a loan) to the Company to redeem the shares held by the ESOP participants. On Date 7, the Company also redeemed the shares of the remaining shareholders, the individuals. On Date 7, you became the Company's sole shareholder.

As of the date of the Act, Company, a closely held C corporation, had a number of activities, including the direct operation of a business, ownership of commercial real estate directly and through a subsidiary, ownership of a sport's related subsidiary, and ownership in a publicly held company. Two of your trustees serve on the Company's board of six directors.

You developed a plan ("Plan") to restructure the Company and its affiliates. Pursuant to the Plan, the Company will dispose of the retail businesses and restructure real estate holdings and rental operations to ensure that the Company derives at least 95% of its gross income from passive sources. You have already begun executing the Plan since August 17, 2006. Specifically, the Company: (1) has disposed of or has discontinued operating businesses; (2)

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has restructured real estate holdings to facilitate generation of income derived from passive sources; (3) has amended lease agreements to ensure that the rental income is derived from passive sources; and (4) has transferred to you assets that produce income derived from passive sources. The Company has submitted pursuant to the ruling request the detailed Plan and the steps it is taking in order to accomplish such restructuring.

You state that pursuant to the Plan, you will reduce your excess business holdings by restructuring the Company's assets and operations so that you (and all disqualified persons) may own an interest of more than 20% in the Company and its affiliates. However, you represent that you will restructure the Company's assets and operations so that the Company, its affiliates, and any other enterprises will "receive at least 95% of its gross income in the form of income "derived from passive sources" within the meaning of §4943(d)(3)(B)." If you cannot restructure so Company shall receive at least 95% of its gross income in the form of income derived from passive sources you will reduce your ownership in the Company to not more than 20%.

The Company will either sell real properties (properties managed by third party management companies) or, if it is in the best interest of the Company not to sell the ownership or interest, the Company will ensure that income from such properties comes from passive sources. Irrespective of your effort to carry out the Plan, you represent that you have faced challenges preventing you from fully executing the Plan, including properties encumbered with third-party leases, memberships, and sponsorship agreements which adversely affect the marketability. However, in time, you will be able to address and resolve these challenges. You represent that the Company sold shares of a publicly-held company it owns, and Company is considering using the proceeds from this sale to improve the assets it is trying to dispose, hoping that such improvements will render such assets more marketable.

You submitted your ruling request and Plan to dispose of your excess business holdings to your state Attorney General, who responded with no objection to your ruling request and Plan.

## RULING REQUESTED

Based on the above facts, you requested a ruling that the periods for disposing of excess business holdings under § 4943(c)(6) with respect to each of the increases in your holdings in the Company's voting stock that arose between August 17, 2006 and Date 6 as a result of the Company's redemptions from the Company's ESOP be extended for additional five-year periods.

## 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 term "excess business holdings" means, with respect to the holdings of any private foundation in any business enterprise, the amount of stock or other

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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)(4)(B) provides that any interest in a business enterprise which a private foundation holds on May 26, 1969, if the private foundation on such date has excess business holding, shall (while held by the foundation) be treated as held by a disqualified person (rather than by the private foundation) during the 15-year period beginning on such date, if the foundation and all disqualified persons have more than a 75 percent voting stock interest on such date.

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)(6)(B) sets forth a similar rule for a change in holdings which causes an increase in excess business holdings.

Section 4943(c)(7) provides that the 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 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 Service any response the private foundation received during the five-year period; and

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

Section 4943(d)(3)(B) provides that the term "business enterprise" does not include a trade or business at least 95 percent of the gross income of which is derived from passive sources. For purposes of § 4943(d)(3)(B), gross income from passive sources includes the items excluded by

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§ 512(b)(1), (2), (3), and (5).

Section 4943(f)(1) provides that an organization, which is described in paragraph (3), shall be treated as a private foundation.

Section 4943(f)(3) provides that an organization is described in this paragraph if such organization is—

(A) a type III supporting organization (other than a functionally integrated type III supporting organization), or

(B) an organization which meets the requirements of subparagraphs (A) and (C) of section 509(a)(3) and which is supervised or controlled in connection with one or more organizations described in paragraph (1) or (2) of section 509(a), but only if such organization accepts any gift or contribution from any person described in § 509(f)(2)(B).

Treas. Reg. § 53.4943-6(a)(1)(iii) provides that § 4943(c)(6)(B) applies where a foundation has excess holdings in a business enterprise (determined without regard to § 4943(c)(4), (5), or (6)) immediately prior to a change in holdings other than by purchase by the foundation or disqualified person.

Treas. Reg. § 53.4943-6(d)(1) provides that as a general rule except as otherwise provided in subparagraph (2) of this paragraph, any increase in holdings in a business enterprise that is the result of a readjustment (as defined in Treas. Reg. § 53.4943-7(d)(1)) shall be treated as acquired other than by purchase.

Treas. Reg. § 53.4943-7(d)(1)(vi) provides that for purposes of this section, the term "readjustment" includes, but is not limited to a redemption, among others.

Treas. Reg. § 53.4943-7(d)(2) describes a prohibited transaction, in relevant part, as any transaction involving a private foundation that has holdings in a business enterprise which acquires or redeems its own stock using cash or other property transferred to the acquiring business enterprise (e.g. as a contribution to capital) or as a loan made or guaranteed by the private foundation, its disqualified persons, or both; or where such purchase of stock is a device to acquire or expand excess business holdings, as determined by all the facts and circumstances in the case.

Treas. Reg. § 53.4943-10(a)(1) provides that the term "business enterprise" includes the active conduct of a trade or business, including any activity which is regularly carried on for the production of income from the sale of goods or the performance of services and which constitutes an unrelated trade or business under § 513.

Treas. Reg. § 53.4943-10(c)(1) provides that the term "business enterprise" does not include a trade or business at least 95 percent of the gross income of which is derived from passive sources.

Treas. Reg. § 53.4943-10(c)(2) provides that gross income from passive sources, for purposes

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of this paragraph, includes the items excluded by § 512(b)(1) (relating to dividends, interest, and annuities), § 512(b)(2) (relating to royalties), § 512(b)(3) (relating to rent) and § 512(b)(5) (relating to gains or losses from the disposition of certain property). Any income classified as passive under this paragraph does not lose its character merely because § 512(b)(4) or § 514 (relating to unrelated debt-financed income) applies to such income.

## ANALYSIS

You have asked for additional five-year periods within which to dispose the excess business holdings you have as a result of the five redemption transactions that occurred on Dates 2, 3, 4, 5, and 6, each which increased your business holdings. Because of the proximity in time of the various redemptions, we think it is reasonable to deal with them jointly. We are not addressing the ownership that you held prior to the Act. Thus, the issue is whether you merit the additional five-year periods permitted under § 4943(c)(7).

Generally, § 4943 imposes a tax on the excess business holdings of any private foundation in a business enterprise. 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 of any incorporated business enterprise, reduced by the percentage of the voting stock owned by all disqualified persons. Generally, anything above this 20 percent is excess business holdings. See § 4943(c)(2). Because you own 100 percent of the Company's voting stock, this would constitute excess business holdings absent exceptions.

However, because you did not purchase the voting stock and instead had increased stock holdings due to redemptions pursuant to the ESOP (see Treas. Reg. §§ 53.4943-6(d)(1) and 53.4943-7(d)(1)(vi)), the increase in excess business holdings due to the redemptions are treated as being held by a disqualified person, not you, during the five-year period beginning on the date of such holding. See § 4943(c)(6)(B).

You represent that you did not finance the Company's buy back of the ESOP shares or make a loan or guarantee a loan used in the buy back. Rather, the Company funded the buy back of the ESOP shares without any financial assistance from you. A prohibited transaction is any transaction involving a private foundation that has holdings in a business enterprise which acquires or redeems its own stock using cash or other property transferred to the acquiring business enterprise or as a loan made or guaranteed by the private foundation, its disqualified persons, or both. See Treas. Reg. § 53.4943-7(d)(2). Because you did not finance the Company's buy back of the ESOP participants' shares, you did not participate in a prohibited transaction. In addition, the Company's buy back of the ESOP participants shares is not a device to acquire or expand excess business holdings, as determined by all the facts and circumstances in the case (See Treas. Reg. § 53.4943-7(d)(2)) in that the ESOP participants had the put options and had the right to exercise them which they did exercise. With all the shares under your sole control, it will be easier for you to dispose the Company's assets.

You assert that by the end of the five-year period provided under § 4943(c)(6), you will have excess business holdings. Thus, you began planning how to eliminate the excess business holdings. However, based on the complexity of the Company's assets and holdings, you stated that you would be unable to dispose the excess business holdings within the initial five-year

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periods following each of the Redemptions. Thus, for each of the Redemptions, you have asked for additional five-year periods in addition to the initial five-year periods to dispose the excess business holdings.

Under § 4943(c)(7), the 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 shows 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 the private foundation submits (i) to the Service a plan for disposing of all of the excess business holdings involved in the extension, and (ii) 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 Service any response the private foundation received during the five-year period and (c) the Service determines that such plan can reasonably be expected to be carried out before the close of the extension period.

Under the excess business holdings rules of § 4943(c)(2), a private foundation and all disqualified persons, combined, are limited to holding 20% ownership of a corporation's voting stock or other interest in a business enterprise. However, the term "business enterprise" does not include a trade or business of which at least 95% of the gross income is derived from passive sources. See § 4943(d)(3)(B). You represent that you will restructure the Company's assets and operations so that the Company, its affiliates, and any other enterprises will "receive at least 95% of its gross income in the form of income "derived from passive sources" within the meaning of Section 4943(d)(3)(B)." You represent that if you cannot restructure the Company's assets and operations to meet this 95% requirement you represent that you will own not more than 20% of the Company.

As required under § 4943(c)(7), from the beginning of the initial five-year periods of each of the Redemptions after August 17, 2006, you began making diligent efforts to dispose holdings you knew will be excess holdings after the initial five-year periods. You ceased the operation of the Company's retail businesses. You were also able to sell two sport-related real properties. Because most of the Company's assets/shares are not readily disposable, you are considering using the proceeds from your sale of a public-held company's shares to improve the Company's assets if such improvements will make such assets readily and easily marketable.

Your efforts to address anticipated excess business holdings issues have been further complicated by the unusual size of your holdings in Company, and the diverse and complex nature of the holdings. While your incremental percentage increase in your interest in the Company's voting stock created by the Company's redemptions from the ESOP created an excess business holding issue, you represent that there is virtually no market for small minority interests in a closely held company. Your trustees have concluded that in order to dispose of the incremental increase in your percentage increase in the Company created by the redemptions, it would in all likelihood have to dispose of the entire Company. Disposing of a significant company during a challenging market for real estate has been difficult. Such

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disposition therefore of the Company by sale has not been possible except at a price substantially below fair market value because of the size and complexity of the holdings.

Before the expiration of the five-year periods for each of the Redemptions, you submitted to the Service a plan of how you will dispose the excess business holdings within the additional five-year periods. Upon the completion of the plan, the Company will derive 95% of its gross income from passive sources or will dispose of the assets so that you will not own more than 20% of the Company.

The appropriate state Attorney General had no objection to your ruling request and your submitted Plan.

Based on the information you submitted, we conclude that the Plan reasonably can be carried out before the conclusion of the additional five-year periods for each of the Redemptions. Therefore, because you meet the requirement of § 4943(c)(7), you are entitled to additional five-year periods in addition to the initial five-year periods you already have for each of the Redemptions to dispose of your excess business holdings.

## RULINGS

Based on the information submitted, we rule as follows:

1. The 5-year period for disposing of excess business holdings under § 4943(c)(6) with respect to the increases in your holdings in the Company's voting stock that occurred on Date 2 is extended an additional 5 years under § 4943(c)(7) to Date 8.
2. The 5-year period for disposing of excess business holdings under § 4943(c)(6) with respect to the increases in your holdings in the Company's voting stock that occurred on Date 3 is extended an additional 5 years under § 4943(c)(7) to Date 9.
3. The 5-year period for disposing of excess business holdings under § 4943(c)(6) with respect to the increases in your holdings in the Company's voting stock that occurred on Date 4 is extended an additional 5 years under § 4943(c)(7) to Date 10.
4. The 5-year period for disposing of excess business holdings under § 4943(c)(6) with respect to the increases in your holdings in the Company's voting stock that occurred on Date 5 is extended an additional 5 years under § 4943(c)(7) to Date 11.
5. The 5-year period for disposing of excess business holdings under § 4943(c)(6) with respect to the increases in your holdings in the Company's voting stock that occurred on Date 6 is extended an additional 5 years under § 4943(c)(7) to Date 12.



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Please note that we make no determination as to whether you qualify as a 'non-functionally integrated Type III supporting organization' in this private letter ruling. We also make no determination as to the 4943 status of your stock ownership (including whether or not it is subject to the transition rules) other than the specified redemptions as outlined above.

This ruling will be made available for public inspection under § 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 Service, we are sending a copy of this letter to your authorized representative.

Sincerely,

Theodore R. Lieber  
Manager, Exempt Organizations  
Technical Group 3

Enclosure  
Notice 437