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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Number: **201232038**
Release Date: 8/10/2012

Date: May 24, 2012

xxxxxxxxxxxx
xxxxxxxxxxxx
xxxxxxxxxxxx

Contact Person:

Identification Number:

Telephone Number:

Employer Identification Number:

Uniform Issue List

4943.00-00

Legend:

State A =
Trust =
Date 1 =
Date 2 =
Date 3 =
Date 4 =
LLC =
Corp. =
a =
b =
c =
d =
e =
x =

Dear :

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

FACTS

You are a nonprofit corporation, located in State A, tax-exempt under § 501(c)(3). You are also a private foundation under § 509(a). You represent that you are organized and operated for charitable and educational purposes. Your primary activities consist of making grants to "support the development of healthier mental attitudes and meaningful insights into the human mind and the nature of human relationships."

On Date 1, Trust transferred x units of a limited liability company ("LLC") to you. LLC is the parent company of a company "which operates hotels throughout the United States and Canada."

xxxxxxxxxxxxxxxxxxxxxxxxxx

As a result of this transfer, you own an a% interest in LLC, while disqualified persons with respect to you own a b% interest in LLC. You and these disqualified persons own a combined interest of c% in LLC. You state that because of this combined interest, your interest in LLC amounts to excess business holdings under § 4943(c)(1). You concluded that § 4943(c)(6) requires you to dispose of your excess business holdings during the initial five-year period following your receipt of your interest in the LLC from Trust. This initial five-year period ended on Date 2.

You state that you made/continue to make unsuccessful, diligent efforts to dispose of the excess business holdings during the initial five-year period. You also state that LLC's advisor continues to seek a buyer(s) willing to purchase a minority interest in LLC. However, because of the unstable/weak economy, no buyer has been forthcoming to purchase your interest in LLC.

LLC contracted with Corp. "to prepare a sale to a strategic buyer valuation analysis in April 2010." Corp., an independent investment company, concluded that "[w]hile EBITDA is near historic lows, current trading multiples suggest that a premium valuation may be achievable in a sale today; (b) [a] liquidity event in 2013 would allow [LLC] to capitalize on significant expected growth in the next 2 – 3 years." Relying on Corp.'s analysis, LLC's Chief Financial Officer concluded that LLC members may receive almost double the sales price for each unit in 2013 compared to the sales price they possibly could have received in 2010.

You stated that because of the unstable/weak economy, it became difficult to find a potential buyer(s) to purchase your interest in LLC. Nonetheless, in the past two to three years, LLC discussed possible sales of interests in LLC with ten potential buyers, but none made a formal offer to purchase any interest in LLC.

LLC also presented a tender offer (buyback of approximately 10 percent of LLC members' units in LLC) to members, who had until Date 4 to accept or reject the offer. The tender offer was accepted only with respect to approximately 1.1 percent of outstanding units.

Giving these circumstances, you represent that sale of LLC before 2013 most likely would have to be at significantly below fair market value. As a result, LLC's board of directors ("Board") concluded that it would not be in the best interests of LLC's members to sell LLC or sell interests in LLC before Date 2. Additionally, you have concluded that selling your interest in the LLC at a price substantially below the fair market value of the interest would diminish your capacity to continue to make grants, considering that your interest in LLC comprises e% of your total assets, using conservative assumptions.

You state that other restrictions also made it difficult to dispose your interest in LLC. First, LLC has the right of first refusal over any proposed sale to a third person pursuant to LLC's Operating Agreement. Second, d% of the members have "tag-along" rights, which means, "any prospective buyer of the Foundation's interest would also have to purchase the interests of those other [d%] owners."

After you consulted legal counsel, your Board approved a plan to dispose of your interests in LLC within an additional five years following the initial five-year period. Pursuant to this plan, you will "seek to sell all or a portion of [your] LLC interests at fair market value to a new prospective investment fund, the investor in which would be a tax-exempt entity, such as a major university seeking to invest a portion of its endowment fund." You will also continue to work with LLC to find a buyer(s) that can purchase your entire interest in LLC in a combined sale that would maximize LLC's assets value. At end of the additional five years, if you are unable to dispose of your interests in LLC, you have stated that you will donate your interest in LLC to a public charity in the community.

You submitted the additional five-year plan to State A's Attorney General, and you will forward any response you receive to the Service as required under § 4943(c)(7)(B)(ii).

RULINGS REQUESTED

Based on the above facts, you requested a ruling that the period for disposing of your excess business holdings under § 4943(c)(7) with respect to the interest you have in LLC be extended for an additional five-year period from Date 2 until Date 3.

LAW

Section 4943(a)(1) imposes an excise tax 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 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)(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 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.

ANALYSIS

You stipulate that you are subject to § 4943, which imposes a tax on the excess business holdings of private foundations. Thus, the issue is whether you have met the requirements of § 4943.

Under § 4943(c)(2)(A), a private foundation is permitted to hold 20 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) and this acquisition causes the foundation to have excess business holdings, the interest of the foundation in the business enterprise will be treated as held by a disqualified person (rather than by the foundation) for a five-period beginning on the date the foundation acquired the holdings, under § 4943(c)(6)(A).

However, 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.

You stated that, as required under § 4943(c)(7), you began making diligent efforts to dispose of your interest in LLC at the beginning of the initial five-year period following the date on which Trust transferred the LLC units to you . However, you realized that because of the unstable/weak economy, any disposition of your interests in LLC would have been at a price substantially below fair market value.

Based on a strategic buyer valuation analysis that Corp., an independent investment company, conducted in April 2010, you concluded that LLC's value in 2013 may be almost double its value in 2010. Thus, you would have incurred a substantial loss if LLC had been sold in 2010 (compared to a sale in 2013), which would have diminished your capability to continue to accomplish your tax-exempt purpose, since your interest in LLC comprised e% of your total assets.

You also state that you could have sold at least a portion of your interest in LLC in a 2011 tender offer, but such a sale would have been at a price that you believe was substantially below fair market value. In addition, you believe that accepting the tender offer at the price it was offered would have diminished your capability to continue to accomplish your tax-exempt purpose.

Further, restrictions placed on interests in the LLC pursuant to LLC's Operating Agreement have made it difficult for you to dispose/sell your LLC interest. First, the LLC has a right of first refusal over any proposed sale to a third person. Second, d% of the members have tag-along rights; this means "that any prospective buyer of the Foundation's interest would also have to purchase the interests of those other [d%] owners."

Thus, as required under § 4943(c)(7), you have shown that you have made diligent efforts to dispose of your holdings during the initial five-year period, and that 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.

As required under § 4943(c)(7), before the expiration of the five-year period, you submitted to the Service a plan of how you will dispose of the excess business holdings within the additional five-year period. Pursuant to this plan, you will pursue selling all or a portion of your interests in LLC at fair market value to a new prospective investor. In addition, you will continue to work with LLC to find a buyer that can purchase your entire interest in LLC. However, at the end of the additional five years, if you are unable to dispose of your interests in LLC, you will donate your interests in LLC to a public charity in the community.

Last, as required under § 4943(c)(7), you submitted your additional five-year plan to the Attorney General of State A. You have not received any correspondence from the Attorney General of State A; however, if you do receive any such correspondence, you will submit a copy to the Service.

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

RULINGS

Based on the information submitted, we rule that under § 4943(c)(7), the period during which you may dispose of your interests in the LLC is extended an additional five years from Date 2 until Date 3.

As you have stipulated that you are subject to § 4943, we are not ruling on whether your interest in the LLC constitutes "excess business holdings" under § 4943(c)(1).

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