

Founder incorporated Taxpayer as a State nonprofit corporation on Date 1. Taxpayer is exempt from federal income tax under IRC section 501(a) as an organization described in IRC section 501(c)(3) and is classified as a private foundation under IRC section 509(a). Founder is a substantial contributor to Taxpayer within the meaning of IRC section 507(d)(2), and, therefore, a disqualified person with respect to Taxpayer under IRC section 4946(a)(1)(A).

On Date 2, Founder donated shares of stock in Company to Taxpayer. Company manufactures _____ such as _____ for varied uses, including _____. Additionally, Company formerly provided surveying services to the _____ industries. The donation of Company stock is the largest gift Taxpayer has ever received, with an estimated value of over twice the value of Taxpayer's total assets at the time of the donation. Taxpayer's interest in Company represents X percent of Company's "fully diluted equity." As a result of Founder's donation, Taxpayer has excess business holdings of Company under IRC section 4943(c)(1). Neither Company, nor any of Company's shareholders, are disqualified persons with respect to Taxpayer within the meaning of IRC section 4946(a)(1).

Taxpayer represents that it has made diligent efforts to dispose of its interest in Company since receiving the stock on Date 2. During the initial five-year period, Taxpayer engaged Adviser to provide advice and develop a plan to dispose of Taxpayer's interest in Company. Adviser advised Taxpayer and Company regarding a complete disposition of Company or, in the alternative, a disposition of Taxpayer's interest in Company (notably, Adviser has long indicated that there is effectively no market for an X-percent interest in Company and that any possible disposition would come by way of a sale of the entirety of Company). Adviser is an experienced investment banking firm, and Adviser's actions during Taxpayer's initial five-year period included actively marketing Company to potential buyers and regularly consulting with Taxpayer and Company regarding the appetite for and likelihood of a disposition. In Year 1, Company entered negotiations with a potential acquirer, with the acquirer executing a nondisclosure agreement and performing diligence on Company. Unfortunately, a sale was not consummated because, among other things, Company and the acquirer were unable to agree on Company's value.

Due to adverse economic conditions in the _____ industry beginning in Year 1, Adviser has been unable to facilitate a sale of Taxpayer's interest in Company or of Company as a whole. Because Company's revenue is highly correlated with the price of _____, the significant decline in the price of _____ and corresponding decrease in

(and demand for Company's products) occurring during Taxpayer's initial five-year period has resulted in dramatic declines in revenue for Company. Potential acquirers of Company have lost interest in purchasing Company because using Company's instruments is – for the time being – no longer cost-effective.

As of Date 3, Adviser believed that market conditions were not conducive to a sale and indicated that more time would be needed for a continued recovery in the industry and for Company's revenues and profitability to improve before potential acquirers would be interested in Company at a reasonable valuation. However, Adviser was confident, at that time, that such a recovery would occur within five years. Since Date 3, the price of I has significantly decreased because of, among other things, a pandemic, creating additional uncertainty regarding the extent and timing of any expected recovery in the industry.

In addition to the downturn in the industry, the size and complexity of Company has impeded Taxpayer's ability to sell its interest in Company. Company competes in a niche market for complex instrumentation and has only primary competitors. The complex nature of the instruments, the limited markets in which they are used, and the small number and size and closely held nature of Company's competitors all make the market for Company's stock highly illiquid.

Taxpayer has represented that because of the state of the industry and because of the size and complexity of Company and its holdings thereof, disposition within the initial five-year period has not been possible except at a price substantially below fair market value.

Taxpayer's initial five-year period for disposing of excess business holdings under IRC section 4943(c)(6) ended on Date 4. Prior to the end of the initial five-year period under IRC section 4943(c)(6), Taxpayer submitted a request to the Internal Revenue Service for an extension of five years to dispose of its excess business holdings pursuant to IRC section 4943(c)(7). Taxpayer's request for an IRC section 4943(c)(7) extension was initially submitted to the operating division of the Internal Revenue Service, not the Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes) as required by Rev. Proc. 2019-1, 2019-01 I.R.B. 1. Taxpayer's extension request was received by the Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes) pursuant to Rev. Proc. 2019-1, 2019-01 I.R.B. 1, on December 17, 2019. Taxpayer supplemented this initial plan of disposition with multiple additional submissions, resulting in a modified plan of disposition. Taxpayer submitted its initial plan of disposition to the State attorney general on Date 5 and submitted a modified plan of disposition to the State attorney general on Date 6. Taxpayer provided the Internal Revenue Service with the attorney general's response to the submission made on Date 5.

Taxpayer's plan of disposition involves continued diligent efforts, with the assistance of Adviser, to market and sell all of Company, or at least Taxpayer's interest in Company. Notwithstanding Adviser's confidence on Date 3 that the industry would recover and that demand for Company's products would increase, leading to a higher valuation for Company, Taxpayer recognizes that uncertainty in the industry's future persists and that there can be no guarantee that Company's value will materially increase during a five-year extension. Taxpayer has represented that if it is unable to

sell its Company stock during the first four years of the five-year extension period, Company will recapitalize Taxpayer's interest in Company into nonvoting stock in Company such that Taxpayer will have permitted holdings in Company. During a meeting of Company's board of directors on Date 7, the board of directors "expressed their approval" of the recapitalization feature of Taxpayer's plan of disposition. Specifically, the board supports a recapitalization that would reduce Taxpayer's holdings of Company's voting stock to no more than 20 percent of Company's voting stock. Taxpayer will ensure that such recapitalization meets the requirements of IRC section 4941(d)(2)(F) so as to avoid any acts of self-dealing.

Based on the documentation submitted and the facts and representations described above, Taxpayer requested the following rulings.

RULING REQUESTS

1. Extend for an additional five years the period of time for disposing of Taxpayer's excess business holdings under IRC section 4943(c)(7).
2. Taxpayer's interest in Company will not be subject to the IRC section 4943(a)(1) tax during the extension period.

LAW

IRC section 4943(a)(1) imposes a tax on the value of excess business holdings of any private foundation in a business enterprise.

IRC 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 that 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.

IRC section 4943(c)(2) provides 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. In any case in which all disqualified persons together do not own more than 20 percent of the voting stock of an incorporated business enterprise, nonvoting stock held by the private foundation shall also be treated as permitted holdings.

IRC section 4943(c)(6) generally provides that if there is a change in a private foundation's holdings in a business enterprise (other than by purchase by the private foundation or by a disqualified person) that 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 five-year period beginning on the date of such change.

IRC section 4943(c)(7) provides that the Secretary may extend the IRC section 4943(c)(6) period to dispose of excess business holdings for an additional five years 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 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 the size and complexity or diversity of such holdings,
- (B) before the close of the initial five-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 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 Secretary any response received by the private foundation during the five-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.

IRC section 4941(a) imposes an excise tax on each act of self-dealing between a disqualified person and a private foundation.

IRC section 4941(d)(1)(A) provides that self-dealing includes, among other things, any direct or indirect sale or exchange of property between a private foundation and a disqualified person.

IRC section 4941(d)(2)(F) provides that any transaction between a private foundation and a corporation that is a disqualified person pursuant to any liquidation, merger, redemption, recapitalization, or other corporate adjustment, organization, or reorganization, shall not be an act of self-dealing if all of the securities of the same class as that held by the foundation are subject to the same terms and such terms provide for receipt by the foundation of no less than fair market value.

Treas. Reg. section 53.4941(d)-2(a) provides that the sale or exchange of property between a foundation and a disqualified person is an act of self-dealing regardless of the amount paid.

ANALYSIS

Taxpayer received Company stock from Founder, a disqualified person with respect to Taxpayer under IRC section 4946(a)(1)(A). Taxpayer's ownership of Company stock constitutes excess business holdings under IRC section 4943(c)(1), and Taxpayer received that stock other than by purchase by Taxpayer or by disqualified persons with respect to Taxpayer. As a result, IRC section 4943(c)(6) provided Taxpayer with an initial five-year period to dispose of its excess business holdings, which ended on Date 4.

The gift of Company stock is the largest gift Taxpayer has ever received, with an estimated value of over twice the value of Taxpayer's total assets at the time of the gift. Additionally, Company sells niche products to a limited market and Company has few competitors. Accordingly, Founder's donation of Company stock to Taxpayer represents an unusually large gift or bequest of diverse business holdings or holdings with complex corporate structures within the meaning of IRC section 4943(c)(7).

During the initial five-year period, Taxpayer made diligent efforts to dispose of its excess business holdings in Company as required by IRC section 4943(c)(7)(A)(i), including working with Adviser to actively market Company to potential acquirers. However, market conditions in the industry, in combination with the unique nature of Company's products and the illiquidity of Company's stock, impeded Taxpayer's attempted disposition of its excess business holdings in Company. Further, Taxpayer has represented that disposition of its interest in Company within the initial five-year period was not possible except at a price substantially below fair market value because of the size and complexity of its holdings. Specifically, the niche, limited market in which Company operates, the small number and size of Company's few competitors, and Company's closely held nature resulted in Company's stock being highly illiquid, effectively ensuring that Taxpayer could only dispose of its excess business holdings at a price substantially below fair market value. Moreover, Adviser has long opined that there is essentially no market for an X-percent interest in Company and that any possible disposition would come by way of a sale of the entirety of Company. Because disposition of Taxpayer's excess business holdings in Company was not possible within the initial five-year period (except at a price substantially below fair market value) by reason of the size and complexity or diversity of such holdings, Taxpayer meets the requirements of IRC section 4943(c)(7)(A)(ii).

Before the end of the initial five-year period, Taxpayer submitted an initial request to the Internal Revenue Service under IRC section 4943(c)(7) seeking an additional five-year period within which to dispose of its excess business holdings in Company. Taxpayer's initial plan and subsequent modified plan present two alternatives for disposing of Taxpayer's excess business holdings in Company; which alternative ultimately accomplishes the desired disposition depends on the recovery of the industry. Taxpayer also submitted both plans to the State attorney general and

provided the State attorney general's response to the initial plan to the Internal Revenue Service.

Although neither Company nor any of Company's shareholders are currently disqualified persons with respect to Taxpayer, it is not necessarily the case that this will be true at the time of the contemplated disposition, whether by sale or recapitalization. However, because Taxpayer has represented that its disposition will result in it only having permitted holdings, and because Taxpayer has represented that any recapitalization will meet the requirements of IRC section 4941(d)(2)(F), that Company or its shareholders may become disqualified persons with respect to Taxpayer within the five-year extension period has no bearing on the viability of Taxpayer's plan of disposition.

RULING

Based on the facts and representations submitted by Taxpayer, we have determined that Taxpayer's plan to dispose of its excess business holdings in Company can reasonably be expected to be carried out before the close of the extension period. Therefore, we conclude that Taxpayer meets the requirements under IRC section 4943(c)(7) for an extension of an additional five years to dispose of these excess business holdings, and Taxpayer's excess business holdings in Company will not be subject to tax under IRC section 4943(a)(1) if Taxpayer disposes of them before the close of the extension period.

The rulings contained in this letter are based upon information and representations submitted by or on behalf of Taxpayer and accompanied by penalty of perjury statements executed by an individual with authority to bind Taxpayer and upon the understanding that there will be no material changes in the facts. While this office has not verified any of the material submitted in support of the request for these rulings, it is subject to verification on examination. The Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes) will revoke or modify a letter ruling and apply the revocation retroactively if there has been a misstatement or omission of controlling facts; the facts at the time of the transaction are materially different from the controlling facts on which the ruling was based; or, in the case of a transaction involving a continuing action or series of actions, the controlling facts change during the course of the transaction. See Rev. Proc. 2019-1, 2019-01 I.R.B. 1, section 11.05.

This letter does not address the applicability of any section of the Code or Regulations to the facts submitted, other than those sections specifically described. Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically, no opinion is expressed as to the existence or acts of disqualified persons with respect to Taxpayer, nor is any opinion expressed regarding Taxpayer's

plan of disposition, including the recapitalization feature, beyond the rulings provided herein.

This ruling is directed only to the taxpayer requesting it. IRC section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to Taxpayer's authorized representative.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

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,

James Zelasko
Branch Chief
Exempt Organizations Branch 2
Employee Benefits, Exempt Organizations, and
Employment Taxes

cc: