

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:
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Telephone Number:

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Date:
July 14, 2021

LEGEND:

- Taxpayer =
- Individual =
- Company =
- Trust =
- Counsel =
- Attorney =
- Date 1 =
- Date 2 =
- Date 3 =
- State =
- X =
- Y =
- Z =

Dear _____ :

This letter ruling is in response to a request from your authorized representative dated January 30, 2021 and subsequent documentation requesting an extension of an additional five years under Internal Revenue Code ("IRC") section 4943(c)(7) for disposing of certain excess business holdings. Taxpayer represents the facts as follows.

FACTS

Taxpayer was incorporated 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). Taxpayer was created by Individual, who 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).

As a result of Individual's death, Taxpayer received X shares of Company's capital stock from Trust, also a disqualified person, on Date 2, which Taxpayer represents is an unusually large bequest. These shares, which were valued for federal tax purposes at Y, represent approximately Z percent of Company's outstanding capital stock and are a minority interest in Company. As a result of the bequest of X shares to Taxpayer, Taxpayer has excess business holdings of Company under IRC section 4943(c)(1).

Taxpayer represents that it has made diligent efforts during the initial five-year period to dispose of its interest in Company since receiving the shares stock. After receiving the shares, Taxpayer consulted with its legal counsel, Counsel, to determine its options for disposition of the shares. Counsel advised that a sale of its shares would be difficult due to the complex nature of the corporate structure of Company and the self-dealing rules under the IRC. Taxpayer also states that it received a redemption offer from Company but did not proceed because the offer did not comply with IRC requirements. Taxpayer subsequently engaged the services of Attorney, who is a corporate attorney with significant experience in investments in private companies, to evaluate the feasibility of a sale of the Taxpayer's shares to an independent investor.

Taxpayer's plan of disposition includes continued diligent efforts to sell its shares of Company. These efforts include obtaining periodic reviews by Attorney to assess the marketability of its shares in Company and hiring an experienced investment banking firm to broaden its search for outside investors. Taxpayer has represented that it has been engaging in productive discussions with Company since the beginning of the current year. Taxpayer states that Company has expressed an interest in redeeming the shares of all shareholders and a willingness to provide financial and other information that would be helpful in engaging in a meaningful search for a buyer. Taxpayer is also considering donating the excess business holdings to one or more public charity grantees.

Taxpayer's initial five-year period for disposing of excess business holdings under IRC section 4943(c)(6) will end on Date 3. Prior to the end of the initial five-year period under IRC section 4943(c)(6), Taxpayer submitted a plan for disposing of all of the excess business holdings.

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.

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) it made 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.

ANALYSIS

Taxpayer received a bequest of Company stock from Individual through Trust, both disqualified persons with respect to Taxpayer under IRC section 4946(a)(1). Taxpayer's ownership of Company stock constitutes excess business holdings under 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, section 4943(c)(6) provides Taxpayer with an initial five-year period to dispose of its excess business holdings, which will end on Date 3.

The shares of stock in Company received by Taxpayer represent a significant portion of Company's outstanding capital stock. Company is a complex closely held business. Accordingly, Individual's bequest of Company stock to Taxpayer represents an unusually large gift of diverse business holdings with a complex corporate structure within the meaning of IRC section 4943(c)(7).

During the initial five-year period, Taxpayer has made diligent efforts to dispose of its excess business holdings, including working closely with Counsel and Attorney to attempt to either sell the shares to an independent investor or have them redeemed by Company. Before the end of the initial five-year period, Taxpayer submitted a request seeking an additional five-year period within which to dispose of its excess business holdings in Company along with a plan for disposing all of the excess business holding during the extension period. Taxpayer's plan includes either a sale of its shares in Company to a third party or a redemption of the shares by Company, which Taxpayer represents will be in accordance with the requirements of IRC section 4941(d)(2)(F).

Taxpayer also represents that in the event a sale or redemption of the shares does not appear possible during the first four years of the extension period, it will donate the shares to one or more public charity grantees.

Taxpayer has also submitted its plan to the State attorney general and provided the State attorney general's response to the plan to the Internal Revenue Service.

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) during the five-year 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. 2021-1, 2021-1 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 self-dealing by disqualified persons with respect to Taxpayer, nor is any opinion expressed regarding Taxpayer's plan of disposition 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: