

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:
 , ID No.

Telephone Number:

Refer Reply To:
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PLR-108891-24

Date:
October 21, 2024

- Taxpayer =
- Founder =
- Company =
- Son =
- State =
- State 2 =
- Date 1 =
- Date 2 =
- Date 3 =
- LLC 1 =
- LLC 2 =
- LLC 3 =
- LLC 4 =
- LLC 5 =
- X =
- Y =

Dear :

This letter responds to a letter from your authorized representative, dated January 31, 2024, and subsequent documentation dated August 27, 2024, September 6, 2024, and October 11, 2024, requesting an additional five years under section 4943(c)(7) of the Internal Revenue Code (Code)¹ to dispose of certain excess business holdings. Taxpayer represents the facts as follows.

¹ Section references are to the Internal Revenue Code of 1986, as amended, unless otherwise indicated.

FACTS

Taxpayer was incorporated as a State nonprofit corporation on Date 1. Taxpayer is exempt from federal income tax under section 501(a) as an organization described in section 501(c)(3) and is classified as a private foundation under section 509.

Founder created Taxpayer as part of Founder's estate planning activities. On Date 2, Founder's estate transferred a 33.33 percent membership interest in Company to Taxpayer. Taxpayer states that the membership interest is the largest gift of a non-cash asset it has ever received, valued at \$X as of Date 2. Taxpayer acknowledges that the membership interest constitutes excess business holdings under section 4943(c)(1), and it states that the section 4943(c)(6) initial five-year period for disposing of those excess business holdings expired on Date 3. At the time of Founder's death, Founder's son, Son, held the remaining membership interest in Company. Son is a disqualified person under section 4946.

Company is a State 2 limited liability company that is treated as a partnership for federal tax purposes. Taxpayer claims that at the time it received its membership interest in Company, Company was complex and diversified, holding various assets, including LLC 1, LLC 2, and LLC 3. LLC 1, LLC 2, and LLC 3 are State 2 limited liability companies. Company is the sole member of LLC 1, LLC 2, and LLC 3. LLC 1 operates as the property manager for certain properties located in State 2. LLC 2's primary asset on Date 2 was a 100 percent membership interest in LLC 4, the primary asset of which was an office building located in State 2. As of Date 2, LLC 3 held various real estate holdings and a 100 percent membership interest in LLC 5, which itself owned a golf course. LLC 4 and LLC 5 were also State 2 limited liability companies.

Taxpayer represents that it made diligent efforts to dispose of its interest in Company throughout the section 4943(c)(6) initial five-year period. Taxpayer initially sought to sell its interest, but it soon realized that, because of Company's size and complexity, it could not find a buyer that would pay for its non-controlling interest without a significant discount from the value of the underlying assets. Consequently, Taxpayer, Company, and Son decided to liquidate Company in its entirety. During the initial five-year period, Company liquidated most of its assets. All that remained were two of the separate real estate properties held by LLC 3. On Date 3, as a result of the liquidation efforts, the approximate fair market value of Taxpayer's membership interest was \$Y. During the initial five-year period, Company actively marketed the remaining two real estate assets, engaging in advanced discussions with potential buyers, but various factors prevented finalizing both sales.

Prior to the end of the initial five-year period under 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 section 4943(c)(7). Taxpayer also submitted its plan of disposition to the State 2 attorney general. The plan involves

winding down Company following the disposition of the remaining two real estate properties held by LLC 3.

RULING REQUESTS

Taxpayer requests a ruling granting it an additional five-year period to dispose of its excess business holdings in Company under section 4943(c)(7).

Taxpayer also seeks confirmation that its interest in Company will not be taxed under section 4943(a)(1) during the extension period.

LAW

Section 4943(a)(1) imposes a tax on the excess business holdings of a private foundation.

Section 4943(c)(1) provides that the term “excess business holdings” means the amount of stock or other interest in a business enterprise that the foundation would have to dispose of to a person other than a disqualified person for the foundation’s remaining holdings in such enterprise to be permitted holdings.

Section 4943(c)(2)(A) provides that the permitted holdings of a private foundation in an incorporated business enterprise are 20 percent of the voting stock, reduced by the percentage of voting stock in the enterprise owned by all the foundation’s 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 is also treated as permitted holdings.

Section 4943(c)(3)(A) provides that, for purposes of section 4943(c)(2), “profits interest” is substituted for “voting stock,” and “capital interest” is substituted for “nonvoting stock,” when the enterprise is a partnership or joint venture.

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.

Section 4943(c)(7) provides that the Secretary may extend the 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 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.

Treas. Reg. § 53.4943-6(b)(1) generally provides that in the case of an acquisition of holdings in a business enterprise by a private foundation pursuant to the terms of a will or trust, the five-year period described in section 4943(c)(6) shall not commence until the date on which the distribution of such holdings from the estate or trust to the foundation occurs.

ANALYSIS

Taxpayer received its membership interest in Company from Founder's estate. Taxpayer's ownership of Company constitutes excess business holdings under section 4943(c)(1), and Taxpayer received the membership interest other than by purchase by Taxpayer or by disqualified persons with respect to Taxpayer. As a result, section 4943(c)(6) provided Taxpayer with an initial five-year period to dispose of its excess business holdings, which ended on Date 3.

Taxpayer's membership interest in Company is the largest gift of a non-cash asset it has ever received. Company was (and has been) a complex and diversified company. Accordingly, Taxpayer's receipt of its membership interest represents an unusually large gift or bequest of diverse business holdings or holdings with complex corporate structures within the meaning of section 4943(c)(7).

Taxpayer made diligent efforts to dispose of its excess business holdings in Company, as required by section 4943(c)(7)(A)(i). After Taxpayer was not able to find a buyer that would pay for its non-controlling membership interest in Company without a significant discount from the underlying value of the assets, Taxpayer, Company, and Son agreed to liquidate Company. During the initial five-year period, Company disposed of nearly all its assets, reducing the fair market value of Taxpayer's interest by roughly 50 percent

as of Date 3. Company actively marketed the two remaining properties, engaging in multiple sale negotiations. 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 section 4943(c)(7)(A)(ii).

Before the close of the initial five-year period, Taxpayer submitted its request to the Internal Revenue Service under section 4943(c)(7), seeking an additional five-year period within which to dispose of its excess business holdings in Company. Taxpayer also submitted its plan to the State 2 attorney general.

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. Accordingly, we conclude that Taxpayer satisfies the requirements under section 4943(c)(7) for an extension of an additional five years to dispose of the excess business holdings, and Taxpayer's excess business holdings in Company will not be subject to tax under section 4943(a)(1) if Taxpayer disposes of them before the close of the extension period.

The ruling contained in this letter is based on information and representations submitted by or on behalf of Taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party, and on the understanding that there will be no material changes in the facts described above. While this office has not verified any of the material submitted in support of the request for a ruling, the material is subject to verification upon examination. The Associate office 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. 2024-1, section 11.05.

This letter does not address the applicability of any section of the Code or Treasury Regulations to the facts submitted other than with respect to the sections specifically described, and, except as expressly provided in this letter, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item of income discussed or referenced in this letter.

This ruling is directed only to Taxpayer. Section 6110(k)(3) of the Code 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, if Taxpayer files its returns electronically, Taxpayer may satisfy this requirement by attaching a statement to its return that provides the date and control number of this letter.

Sincerely,

Kenneth M. Griffin
Branch Chief
Exempt Organizations Branch 3
(Employee Benefits, Exempt Organizations,
and Employment Taxes)

cc: