



DEPARTMENT OF THE TREASURY  
Internal Revenue Service  
WASHINGTON, D.C. 20224

TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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Contact Person:

Identification Number:

Telephone Number:

Employer Identification Number:

Legend:

Founder	=
Companies	=
Corporation	=
Products	=
Plantation	=
Holding Company	=
Partnership	=

Dear :

This is in reply to your ruling request regarding the proposed recapitalization and related actions pursuant to section 4943 of the Internal Revenue Code ("Code").

**FACTS**

You are exempt from federal income tax under section 501(c)(3) of the Code and are a private foundation within the meaning of section 509(a). You have been described in section 501(c)(3) since 1981.

You carry out your charitable purposes through a discretionary program of gifts and grants that supports various programs, including medical research, promotion of the performing arts, hosting conferences regarding public policy, and the protection of endangered wild animal species.

The information submitted indicates you were established by Founder. Founder was your sole contributor and a substantial contributor as defined in section 507(d)(2) of the Code. Founder was your sole member and had the power to elect, appoint and remove directors at will, since the members of the Foundation elect the directors. The number of directors was increased to

eight in Founder's will.

Founder died in 1998 and the entire residue of Founder's estate was bequeathed to you under the terms of Founder's will. The assets in Founder's estate included all of the stock of Companies (the Companies comprise six sawmills) and Corporation. Accordingly, you now own all the stock of the Companies and the Corporation.

In 2003, you received a ruling from us to the effect that you can continue to hold 100% of the voting stock of Companies and Corporation for an additional five-year extension period until January 2009. You currently own 100% of the outstanding shares of capital stock (and, therefore, 100% of the vote and value) of the Companies and Corporation through a wholly owned limited liability company, Holding Company, a disregarded entity for federal tax purposes. Each of the Companies and Corporation has outstanding one class of voting common stock.

Each of the Companies and Corporation holds an interest in Partnership. Partnership owns among other properties (1) Products and (2) the assets of Plantation.

In order to reduce your interests to 20% of the voting stock of Companies and Corporation by January 2009, you decided on a restructuring plan. The intention of the restructuring plan is to permit time for you to undertake a planned diversification of your investments in the Companies in an orderly manner. Your first step is to remove the Plantation assets from the Partnership to Corporation, in retirement of Corporation's interest in Partnership. You, through your Holding Company, will continue to own 100% of the stock of Corporation. You represent that this action will result in a more focused structure that reflects the primarily foundation-related activities of Plantation, in contrast to the for profit businesses of the Companies, which are unrelated to your charitable purposes and activities, except as an investment and a source of funding. However, the Product's headquarters building located on the Plantation will be retained by the Companies.

Plantation consists of almost 8,000 acres of woodlands and was established by the Founder as a setting of natural beauty. The facilities include conference meeting rooms, theater and rehearsal spaces, housing for approximately 100 guests, dining, and recreational facilities. Recreational facilities include a 9-hole golf course and stables. The stable is a small remnant of a larger historical operation on the Plantation. The golf course is primarily provided as part of the recreational offerings available to guests of the Plantation.

The Plantation also contains what is one of the country's leading facilities for breeding endangered wild animal species with full veterinary support, as well as undeveloped land, and timberlands. After the Founder's death, his executors moved the headquarters offices of the Companies into a building at Plantation, as a cost-saving measure for you.

During the past 10 years, Plantation has hosted more than 200 world leaders from all parts of the globe. Plantation has hosted seminal conferences on energy, health and religion, as well as conferences on transitions in the Pacific Rim and the relationship between the United States and the Muslim world. You have often partnered with leading philanthropic and policy organizations and, in the year ahead, meetings are scheduled with the upcoming generation of

political, social and business leaders from Arab nations as well as a Mexican-Canadian initiative to expand the scope and focus of international summit meetings. The Plantation consists of almost 200 structures, which provide guest accommodations and varied meeting facilities. The Founder's idea was to attract to you scholars, leaders and thinkers worldwide and provide a venue conducive to the exchange of ideas addressing fundamental issues and problems on all matters of contemporary thought.

There are also meetings of various charitable organizations and conferences of wildlife conservation groups, and veterinary medicine groups. These conferences are related to a center for endangered species, which is run by you and is a section 501(c)(3) of the Code and section 509(a)(1) public charity. This center is located on the Plantation. The center is a breeding facility for endangered wild animals. As a breeding and wildlife research center, it works closely in cooperation with local universities, government wildlife agencies, and zoos in many countries.

The Plantation houses a dance studio which serves as a rehearsal space for leading choreographers, dance companies, and performing artists who are selected for residences at Plantation.

You state that for slight incremental costs, the facilities at the Plantation are used at such times (when otherwise idle) to generate revenue which would partially offset the fixed costs of the facilities. Therefore, the facilities are sporadically made available for "for-profit" activities such as corporate retreats, day tours, golf course play, and dinners. You represent that all revenue generated from the non-charitable use of Plantation, including the stables and golf course, is used to maintain the Plantation, defraying its operating costs and to make necessary improvements. These non-charitable activities you represent are minimal and incidental in nature. You represent any non-charitable use of Plantation will occur during the times that you are not using it for charitable purposes.

Plantation is also made available to charitable organizations that qualify as exempt from federal income tax under section 501(c)(3) of the Code. In 2006, thirty charitable organizations used the Plantation either for free or at substantially below cost.

The plan then calls for a recapitalization of the Companies. You propose to effect a recapitalization of the equity securities of the Companies, donate non-voting shares, and subsequently exchange the non-voting shares for voting shares, as described below, to make possible a transfer by you to public charities shares representing 80% of the outstanding stock that votes for directors of the Companies.

Each of the Companies is recapitalized, and a portion of each of the Companies' outstanding stock is donated to one or more public charities, pursuant to the following four steps.

Step 1. The charter of each of the Companies is amended to provide for a board of directors consisting of at least five directors, and Holding Company selects all of the initial directors of each Companies board. The members of each of the Companies' boards are identical.

Step 2. The charter of each of the Companies is amended to authorize for issuance 1,000

shares of Senior Common Stock ("Senior Stock"), 100 shares of Class A Junior Voting Common Stock ("Class A Voting Stock") and 100 shares of Class B Junior Non-Voting Common Stock ("Class B Non-Voting Stock") (collectively called "Junior Stock"). A plan of recapitalization is then adopted pursuant to which the outstanding shares of common stock of each Company are converted into 960 shares of Senior Stock and 40 shares of Class B Non-Voting Stock.

Step 3. Holding Company then donates 40 shares of Class B Non-Voting Stock of each of the Companies to one or more section 501(c)(3) public charities. Holding Company and each charity may agree on their mutual intention that dividends and other proceeds from the stock donated to the charity be used for a specified purpose, i.e., a specific endowment.

Step 4. Pursuant to the terms of the donations, each charity exchanges all of its shares of Class B Non-Voting Stock in each of the Companies for an equal number of shares of Class A Voting Stock.

The specific attributes of the stock are:

**Senior Stock:** You will own 960 shares of the Senior stock (constituting all of the outstanding shares). Dividends are issued if and when the Companies board declares, but the corporate charter contemplates regular ample annual dividends. Regarding voting, the Senior Stock is entitled to (i) as a class elect one director (out of a total of never less than five directors) and (ii) to vote (one vote per share), together with all holders of Junior Stock on all other matters requiring shareholder vote under applicable state law, the sale of the underlying assets contributed to the Partnership and certain other major corporate actions ("Major Transactions") and separate transfers of otherwise stapled shares of Junior Stock. On liquidation, the Senior Stock is entitled to receive a fixed sum or redemption equal to the value of the Holding Company's stock of the Companies surrendered in the recapitalization determined at that time. Above that liquidation preference, all shares (Senior and Junior) share equally in liquidating distributions. Additionally, in the event of an issuance of additional shares of Junior Stock of the Companies, the holder of the Senior stock will be entitled to buy additional shares of Senior Stock necessary to avoid dilution of its equity interest in the Companies.

**Junior Stock.** The total number of Junior Stock outstanding at any time is intended to equal  $4/96^{\text{th}}$  of the total number of shares of Senior Stock outstanding. Each outstanding share of Junior Stock is entitled to annual noncumulative dividends, if and when declared by the board equal to (1) an amount such that all shares of Junior Stock of all the Companies will receive an aggregate annual dividend preference of \$200,000 (the dividend preference) plus (2) the amount of any dividends paid that year on a share of Senior Stock. The dividend preference on the Junior Stock must be paid in order for any dividends to be paid on the Senior Stock. Regarding Voting rights - Class A Voting Stock is entitled (i) as a class to elect all but one director (i.e. to elect a minimum of four directors) and (ii) to vote (one vote per share), together with all the holders of Senior Stock and Junior Stock, on all other matters requiring a shareholder vote under applicable state law, and Major Transactions and separate transfers of otherwise stapled shares of Junior Stock. Class B Non-Voting Stock is not entitled to vote for directors, but is entitled to vote (one vote per share), together with all the holders of Senior and Junior Stock, on all matters requiring a shareholder vote under applicable state law, and Major Transactions and separate transfers of otherwise stapled shares of Junior Stock. The

restrictions on transfers of Junior Stock are: (i) each of the Companies has a right of first refusal with respect to transfers of its Junior Stock; each of the Companies has the right to purchase, or designate a purchaser of the Junior Stock. (ii) Neither the Companies nor any person who is a disqualified person within the meaning of section 4946(a) of the Code with regard to you can own any Class A Voting Stock at a time when you own any Senior Stock. (iii) If you or a disqualified person acquires any Class A Voting Stock, such Class A Voting Stock automatically converts into Class B Non-Voting Stock to the extent necessary to prevent you from being deemed to own more than 20% of the Companies outstanding stock that votes for directors. (iv) If a holder of Class A Voting Stock becomes a disqualified person, such stock shall automatically convert into Class B Non-Voting Stock to the extent necessary to prevent you from being deemed to own more than 20% of the Companies outstanding stock that votes for directors. (v) Shares of Junior Stock owned by any person, other than Holding Company or you, cannot be transferred separately from shares of Junior Stock (i.e., all of the Junior Stock of each of the Companies owned by a person other than Holding Company or you, is "stapled" together), unless a separate transfer of shares of Companies Junior Stock by such person is approved by a majority vote of all outstanding shares of the Companies. A seller of 80% or more of the outstanding shares of Senior Stock must drag along all (but not less than all) of the Junior Stock at a price appropriately derived from the price for such Senior Stock (awarding no premium or discount to differences in voting power). Such seller can also require the sale of the Companies to be implemented as a sale of assets (rather than stock).

Based on the above facts, you request the following rulings:

1. Your ownership of the Companies, after the recapitalization, will be permitted holdings under section 4943(c)(2)(A) of the Code.
  - A. The Senior Stock, Class A Voting Stock and Class B Non-Voting Stock of each of the Companies to be received by you pursuant to the recapitalization will be treated as equivalent to the voting stock of each of the Companies surrendered by you so that you will be permitted to hold the stock received pursuant to the recapitalization until January 13, 2009 pursuant to section 4943 of the Code.
  - B. After the donations to the charities of Class B Non-Voting Stock and the Share Exchange, you (and disqualified persons) will not own more than 20% of the vote of the Companies pursuant to section 4943 of the Code. You may continue to hold indefinitely Senior Stock of each of the Companies representing not more than 20% of the outstanding voting stock of such Companies pursuant to section 4943.
  - C. There are no material restrictions placed on the Junior Stock that prevent the donee charities from freely and effectively using or disposing of the transferred interest pursuant to section 53.4943-2(a)(1)(iv) of the regulations.

- D. Your ownership of voting stock of each of the Companies would not increase as a result of the Companies' repurchase of Class A Voting Stock pursuant to section 4943 of the Code.
  - E. Your ownership of voting stock of each of the Companies would not increase as a result of any acquisition of Class A Voting Stock by you or a disqualified person pursuant to section 4943 of the Code since the Class A Voting Stock will automatically convert into Class B Non-Voting Stock.
2. Your ownership of 100% of the stock of Corporation will not be considered excess business holdings under section 4943 of the Code because Corporation is a functionally related business as defined in section 4943(d)(3)(A).

## **LAW**

Section 501(c)(3) of the Code exempts from federal income tax corporations organized and operated exclusively for charitable or educational purposes.

Section 509(a) of the Code provides that, unless specifically excepted, a domestic or foreign organization described in section 501(c)(3) is a private foundation and subject to the excise taxes of Chapter 42.

Section 512(a)(1) of the Code describes the term "unrelated business taxable income" as the gross income derived by an exempt organization from any unrelated trade or business, as defined under section 513, regularly carried on by it, less certain deductions, but with modifications provided in section 512(b).

Section 513(a)(1) of the Code provides that the term "unrelated trade or business" means, in the case of any organization subject to tax under section 511, any trade or business the conduct of which is not substantially related (Aside from the need of such organization for the income or funds or the use it makes of the profits derived) to the exercise or performance by such organization of its charitable, educational, or other purpose or function constituting the basis of its exemption under section 501.

Section 513(c) of the Code and section 1.513-1(b) of the regulations provides that trade or business includes any activity, which is carried on for the production of income from the sale of goods. An activity does not lose its identity as trade or business merely because it is carried on within a larger aggregate of similar activities or within a larger complex of other endeavors, which may not be related to the exempt purposes of the organization.

Section 4942(j)(4) of the Code provides that the term "functionally related business" means: (1) A trade or business which is not an unrelated trade or business (as defined in section 513), or (2) An activity which is carried on within a larger aggregate of similar activities or within a larger complex of other endeavors which is related (aside from the need of the organization for income or funds or the use it makes of the profits derived) to the exempt purposes of the organization.

Section 4943(a) of the Code imposes a tax on the excess business holdings of any private foundation in a business enterprise during any taxable year.

Section 4943(c)(1) of the Code defines the term "excess business holdings" as the amount of stock in a corporation that a foundation would have to dispose of to a person other than a disqualified person in order for the remaining holdings of the foundation in the corporation to be permitted holdings.

Section 4943(c)(2) of the Code limits the holdings of a private foundation in a corporation to 20 percent of the voting stock of the business enterprise, reduced by the percentage of the voting stock owned by all disqualified persons.

Section 4943(c)(2)(A) of the Code provides that the permitted holdings of any private foundation in an incorporated business enterprise are:

- (i) 20 percent of the voting stock, reduced by
- (ii) The percentage of the voting stock owned by all disqualified persons.

Section 4943(c)(2)(C) of the Code provides that a private foundation shall not be treated as having excess business holdings in any corporation in which it (together with all other private foundations which are described in section 4946(a)(1)(H)) owns not more than 2 percent of the voting stock and not more than 2 percent in value of all outstanding shares of all classes of stock.

Section 4943(c)(6)(A) of the Code provides that, with certain exceptions not applicable here, if after May 26, 1969, there is a change in the holdings in a business enterprise (other than by purchase, i.e., by gift or bequest) 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(d)(1) of the Code defines business holdings as in computing the holdings of a private foundation, or a disqualified person with respect thereto, in any business enterprise, any stock or other interest owned, directly or indirectly, by or for a corporation shall be considered as being owned proportionately by or for its shareholders.

Section 4943(d)(3)(A) of the Code provides that the term "business enterprise" does not include: (A) a functionally related business (as defined in section 4942(j)(4)) or (B) a trade or business at least 95% of the gross income of which is derived from passive sources.

Section 4946(a)(1)(H) of the Code provides that for the purposes of section 4943 the term disqualified person includes a private foundation which is effectively controlled (directly or indirectly) by the same person or persons who control the private foundation in question, or one where substantially all of the contributions were made (directly or indirectly) by the same persons to include a substantial contributor or a member of their family.

Section 53.4942(a)-2(c)(3)(iii) of the Foundation and Similar Excise Tax Regulations (regulations) provides that the term "functionally related business" means--(1) A trade or business which is not an unrelated trade or business (as defined in section 513), or (2) An activity which is carried on within a larger aggregate of similar activities or within a larger complex of other endeavors which is related (aside from the need of the organization for income or funds or the use it makes of the profits derived) to the charitable, educational, or other similar exempt purpose of the organization.

Examples 1 and 2 of section 53.4942(a)-2(c)(3)(iii)(b) of the regulations provides the following illustrations of a functionally related business.

Example (1) X, a private foundation, maintains a community of historic value, which is open to the general public. For the convenience of the public, X, through a wholly owned, separately incorporated, taxable entity maintains a restaurant and hotel in such community. Such facilities are within the larger aggregate of activities which makes available for public enjoyment the various buildings of historic interest and which is related to X's exempt purpose. Thus, the operation of the restaurant and hotel under such circumstances constitutes a functionally related business.

Example (2). Y, a private foundation, as part of its medical research program under section 501(c)(3), publishes a medical journal in carrying out its exempt purpose. Space in the journal is sold for commercial advertising. Notwithstanding the fact that the advertising activity may be subject to the tax imposed by section 511, such activity is within a larger complex of endeavors which makes available to the scientific community and the general public developments with respect to medical research and is therefore a functionally related business.

The General Explanation of the Tax Reform Act of 1969, (Blue Book) prepared by the staff of the Joint Committee On Internal Revenue Taxation (December 3, 1970) includes the following explanation to the exception:

An exception to the limitation on the holding of business interests is provided in the case of a business which is related under the provisions dealing with taxes on unrelated business income. Another exception is provided, even where the business, although unrelated to the direct activities of the foundation, "is carried on within a larger aggregate of similar activities or within a larger complex of other endeavors which is related (aside from the need of such organization for income or funds or the use it makes of the profits derived) to the exempt purposes of the organization."

These exceptions are intended to make clear that certain types of business activities may continue to be held by the foundation notwithstanding the general rule. For example, the Inn and Lodge at Colonial Williamsburg are separately incorporated taxable entities, but are owned by the foundation for the convenience of the general public visiting Williamsburg. Also, many museums maintain cafeterias and snack bars for the convenience of the public visiting the museums. Although advertising in a foundation's journal may be an unrelated trade or business it comes under the second of these exceptions if the foundation's journal is related to the foundation's exempt purposes. Such business activities do not have to be disposed of under these provisions.

Section 53.4943-1 of the regulations provides that generally, under section 4943 of the Code, the combined holdings of a private foundation and all disqualified persons (as defined in section 4946(a)) in any corporation conducting a business which is not substantially related to the exempt purpose of the foundation are limited to 20 percent of the voting stock in such corporation.

Section 53.4943-2(a)(1)(iv) of the regulations provides if a private foundation disposes of an interest in a business enterprise but imposes any material restrictions or conditions that prevent the transferee from freely and effectively using or disposing of the transferred interest, then the transferor foundation will be treated as owning such interest until all such restrictions or conditions are eliminated (regardless of whether the transferee is treated for other purposes of the Code as owning such interest from the date of the transfer).

Section 53.4943-3(a)(1) of the regulations provides that for purposes of section 4943, the term "excess business holdings" means, with respect to the holdings of any private foundation in any business enterprise (as described in section 4943(d)(4)), the amount of stock or other interest in the enterprise which, except as provided in section 53.4943-2(a)(1), the foundation, or a disqualified person, 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 53.4943-3(b)(1)(i) of the regulations provides that except as otherwise provided in section 4943(c)(2) and (4), the permitted holdings of any private foundation in an incorporated business enterprise are—(A) 20 percent of the voting stock in such enterprise reduced (but not below zero) by (B) the percent of voting stock in such enterprise actually or constructively owned by all disqualified persons.

Section 53.4943-3(b)(1)(ii) of the regulations provides that the percentage of voting stock held by any person in a corporation is normally determined by reference to the power of stock to vote for the election of directors, with treasury stock and stock which is authorized but unissued being disregarded.

Section 53.4943-3(b)(2)(i) of the regulations provides that in general, in addition to those holdings permitted by paragraph (b)(1) of this section, the permitted holdings of a private foundation in an incorporated business enterprise shall include any share of nonvoting stock in such enterprise held by the foundation in any case in which all disqualified persons hold no more than 20 percent of the voting stock in such enterprise. All equity interests which do not

have voting power attributable to them shall, for purposes of section 4943, be classified as nonvoting stock. For this purpose, evidence of indebtedness (including convertible indebtedness), and warrants and other options or rights to acquire stock shall not be considered equity interests.

Section 53.4943-3(b)(2)(ii) of the regulations provides that stock carry voting rights which will vest only when conditions, the occurrence of which are indeterminate, have been met, such as preferred stock which gains such voting rights only if no dividends are paid thereon, will be treated as nonvoting stock until the conditions have occurred, which cause the voting rights to vest. When such rights vests, the stock will be treated as voting stock that was acquired other than by purchase, but only if the private foundation or disqualified persons had no control over whether the conditions would occur. For special rules where stock is acquired other than by purchase, see section 4943(c)(6) and the regulations thereunder.

## **ANALYSIS**

### **Ruling 1A.**

Under sections 4943(c)(6) and (c)(7) of the Code, the stock of the Companies is held by a disqualified person until January 2009. If immediately prior to a readjustment, a private foundation has holdings in a business enterprise which are treated as held by a disqualified person, any holdings in a business which are received in a readjustment in exchange for such section 4943(c)(6) holdings are treated as holdings surrendered in the exchange to the same extent as provided in section 53.4943-7 of the regulations with respect to the exchanges involving holdings pursuant to which section 4943(c)(4) and (c)(5) applies. Section 53.4943-6(d)(3). The Senior stock, Class A Voting Stock and Class B Non-Voting Stock of each of the Companies to be received by you pursuant to the recapitalization will be treated as equivalent to the voting stock of each of the Companies surrendered by you so that you will be permitted to hold the stock received pursuant to the recapitalization until January 13, . Therefore your ownership of the Companies, after the recapitalization, will be permitted holdings under section 4943(c)(2)(A).

### **Ruling 1B.**

Under section 4943(c)(2)(A) of the Code a private foundation's permissible business holdings are generally limited to 20% of the voting stock of the business. For these purposes voting stock is defined as the stock having the power to vote for the election of the directors. Section 53.4943-3(b)(2)(i) of the regulations. After the recapitalization there will be two classes of stock outstanding, the Senior Stock and the Class A Voting Stock. Both the Senior Stock and the Class A Stock entitle the holders to vote for directors, therefore both classes will be voting stock. You have represented that you will own 100% of a class of stock entitled to elect 20%, or one out of five directors, and own 0% of a class of stock entitled to elect 80%, our four out of five directors. Therefore, based upon the definition of voting stock under the regulations, the percentage of voting stock held by you will be 20% and you will not own any nonvoting stock since you state it will be cancelled after the share exchange. After the donations to the charities of Class B Non-Voting Stock and the Share Exchange, you (and disqualified persons) will not

own more than 20% of the vote of the Companies pursuant to section 4943.

Ruling 1C.

If a private foundation disposes of an interest in a business enterprise but imposes any material restrictions or conditions that prevent the transferee from freely and effectively using or disposing of the transferred interest, then the transferor charity will be treated as owning such interest until all such restrictions or conditions are eliminated (regardless of whether the transferee is treated for other purposes of the Code as owning such interest from the date of the transfer). Section 53.4943-2(a)(1)(iv) of the regulations.

In the proposed recapitalization, the restrictions you have placed on the transferred interest as stated in the facts section above are not deemed "material restrictions" within the meaning of section 4943 of the Code. You represent that the restrictions placed on the stock would all be imposed by the Companies and not by you. The restrictions do not further any continuing interest of the donor. Thus, there are no material restrictions placed on the Junior Stock that prevent the donee charities from freely and effectively using or disposing of the transferred interest pursuant to section 53.4943-2(a)(1)(iv) of the regulations.

Ruling 1D.

Your ownership of voting stock of each of the Companies would not increase as a result of the Companies' repurchase of Class A Voting Stock. In the event of a redemption of the Junior Stock of a Company, the holder of the Senior Stock of the Companies may increase its percentage share of the equity of the Companies. However, you represent that shares of the Senior Stock are only entitled to vote for one of five directors, therefore, any increase in your equity in the Companies will not result in an increase in any voting rights.

Ruling 1E.

You have represented that neither you nor any person who is a disqualified person with respect to you can own any Class A Voting Stock at a time when you own any Senior Stock. If you or a disqualified person acquire any Class A Voting Stock of one of the Companies, such Class A Voting Stock automatically converts into Class B Non-Voting Stock of such Company to the extent necessary to prevent you from being deemed to own stock representing more than 20% of the total voting power of the Companies outstanding stock that votes for directors. If a holder of Class A Voting Stock of a Company becomes a disqualified person, you represent that such Class A Voting Stock automatically converts into Class B Non-Voting Stock of the Company to the extent necessary to prevent you from being deemed to own stock representing more than 20% of the total voting power of the Company's outstanding stock. Therefore, your ownership of voting stock of each of the Companies would not increase as a result of any acquisition of Class A Voting Stock by you or a disqualified person pursuant to section 4943 of the Code since the Class A Voting Stock will automatically convert into Class B Non-Voting Stock.

Ruling 2:

The taxes on excess business holdings do not apply with respect to holdings in a functionally

related business because a functionally related business is not considered a business enterprise under section 4943(d)(3)(A) of the Code. A functionally related business is a business or activity the conduct of which is substantially related to the exercise or performance by the private foundation of its charitable, educational or other tax exempt purpose. The activities must contribute directly and importantly to the accomplishment of one or more of your exempt purposes through your discretionary program of gifts and grants that support various programs, including medical research, promotion of the performing arts, hosting conferences on public policy and protection of endangered wild animal species and to focus into a developing a preeminent intellectual center, to include conferences and the development of papers on significant ideas for solving problems of this century. The facilities will be used primarily for these tax exempt charitable purposes.

Plantation's exempt purpose is supporting various programs, including medical research, promotion of the performing arts, hosting conferences regarding public policy, and through a subsidiary, the protection of endangered wild animal species. The Plantation's facilities are also used by charities that qualify under section 501(c)(3) of the Code for free or substantially below cost. Additionally, you have represented that any elements of Plantation that are not in furtherance of exempt purposes within the meaning of section 501(c)(3) will be "incidental in nature and amount." Therefore, the Corporation which holds the assets of the Plantation is a functionally related business.

## RULINGS

- 1 Your ownership of the Companies, after the recapitalization, will be permitted holdings under section 4943(c)(2)(A) of the Code.
  - A. The Senior Stock, Class A Voting Stock and Class B Non-Voting Stock of each of the Companies to be received by you pursuant to the recapitalization will be treated as equivalent to the voting stock of each of the Companies surrendered by you so that you will be permitted to hold the stock received pursuant to the recapitalization until January 13, pursuant to section 4943 of the Code.
  - B. After the donations to the charities of Class B Non-Voting Stock and the Share Exchange, you (and disqualified persons) will not own more than 20% of the vote of the Companies pursuant to section 4943 of the Code. You may continue to hold indefinitely Senior Stock of each of the Companies representing not more than 20% of the outstanding voting stock of such Companies pursuant to section 4943.
  - C. There are no material restrictions placed on the Junior Stock that prevent the donee charities from freely and effectively using or disposing of the transferred interest pursuant to section 53.4943-2(a)(1)(iv) of the regulations.
  - D. Your ownership of voting stock of each of the Companies would not increase

as a result of the Companies' repurchase of Class A Voting Stock pursuant to section 4943 of the Code. This ruling is conditioned on the Companies owning some but not all of the Class A Voting Stock after such repurchase.

- E. Your ownership of voting stock of each of the Companies would not increase as a result of any acquisition of Class A Voting Stock by you or a disqualified person pursuant to section 4943 of the Code since the Class A Voting Stock will automatically convert into Class B Non-Voting Stock.
- 2 Your ownership of 100% of the stock of Corporation will not be considered excess business holdings under section 4943 of the Code because Corporation is a functionally related business as defined in section 4943(d)(3)(A).

This ruling does not purport to rule on any other provisions of the Code, including the application of the unrelated business income tax provisions.

This ruling will be made available for public inspection under section 6110 of the Code 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) of the Code 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. 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.

Sincerely,

Marvin R. Friedlander  
Manager, Exempt Organizations  
EO Technical

Enclosure  
Notice 437