



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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Number: **200833018**
Release Date: 8/15/2008

Date: May 21, 2008

UIL: 4943.00-00

Contact Person:

Identification Number:

Telephone Number:

Employer Identification Number:

SE:T:EO:RA:T:1

Legend

L =
Corporation =
Date a =
Date b =

Dear :

This is in response to your letter requesting an extension for an additional five years under section 4943(c)(7) of the Internal Revenue Code for disposing of certain excess business holdings.

Facts

You are a non-profit corporation recognized as exempt from federal income tax under section 501(c)(3) of the Code and classified as a private foundation under section 509(a).

You were founded by L. L and his wife serve as your Board of Directors. L has been your sole contributor and is a disqualified person with respect to you under section 4946 of the Code.

L donated to you shares of Corporation, the shares of which are traded on the New York Stock Exchange. Because L owned more than 20 percent of Corporation's shares, the shares of Corporation you own constituted excess business holdings to you under section 4943(c)(1) of the Code.

During the initial five-year period for disposing of excess business holdings under section 4943(c)(6) of the Code, which ended on Date a, your plan for disposing of your Corporation shares was to hold the shares until the trading volume accommodated sales of large blocks of stock and the true value of the stock could be fully realized or close to fully realized. However, you state that due to securities law requirements limiting the number of shares that could be sold, the thin trading volume and the stock price lagging for a longer than expected period, you were unable to sell any shares until the fourth quarter of the fifth year, except at a price substantially below Corporation's fair market value. You also concluded that any meaningful sale would be impossible without having a significant negative impact on the value of the shares because of the inherent problems and risks in selling large blocks of stock. Thus, the sale of a

large block of shares could have reduced significantly the price of the shares sold as well as the future value of the shares you retained.

You also state that a further impediment to your sale of Corporation shares was Corporation's own stock trading policy. The officers and directors of Corporation adopted an informal plan, which was subsequently formalized, to ensure that stock transactions by officers and directors, including L and his wife, involving Corporation shares, would not violate securities laws. By the end of the fifth year, due to an improvement in earnings and the payment of a dividend, both the market price of Corporation shares and its trading volume increased significantly. Nevertheless, this policy effectively precluded you from selling your Corporation shares.

Prior to Date a, the end of the initial five-year period for disposing of excess business holdings under section 4943(c)(6) of the Code, you submitted a request to the Internal Revenue Service for an extension of five years to complete the required disposition of your Corporation shares. In this request, you explained the difficulties you encountered, as described above, in disposing of your Corporation shares prior to that date. You also described your new plan to dispose of all your Corporation shares within an additional five-year period. You submitted the new plan to your state's Attorney General. In a written response, the Attorney General stated that he approved the plan.

Under your new plan, beginning in the sixth year, you intend to sell Corporation shares in smaller blocks and then ultimately, in larger blocks. In addition, you entered into a Sales Plan with a major investment banking firm to sell large amounts of Corporation shares. You estimate that under this plan, it will take approximately five years to sell all of your Corporation shares.

Ruling Requested

Under section 4943(c)(7) of the Code, the period during which you may dispose of your Corporation shares is extended an additional five years until Date b.

Law

Section 4943 of the Code imposes excise taxes on the excess business holdings of any private foundation in a business enterprise.

Under section 4943(c)(1) of the Code provides that excess business holdings are the amount of stock in a corporation a private foundation owns that exceeds its permitted holdings. Permitted holdings are 20 percent of the corporation's voting stock less the percentage of the voting stock owned by all disqualified persons.

Section 4943(c)(6)(A) of the Code provides that if there is a change in the holdings of stock in a corporation (other than by purchase by the private foundation or by a disqualified person) which causes the private foundation to have excess business holdings in the corporation, the excess business holdings are treated as being owned by disqualified persons for five years from the date of the change.

Section 4943(c)(7) of the Code provides that the IRS 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 Internal Revenue 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 Internal Revenue Service any response the private foundation received during the five-year period; and

(C) The Internal Revenue Service determines that such plan can reasonably be expected to be carried out before the close of the extension period.

Analysis

You received the donation of a large number of Corporation shares from L, one of your Directors. L is a disqualified person with respect to you under section 4946 of the Code. Because L owned more than 20 percent of Corporation's shares, the shares of Corporation you own constituted excess business holdings under section 4943(c)(1). Therefore, you were required under section 4943(c)(6) to dispose of all of these shares during an initial five-year period ending on Date a.

During this period, you made diligent efforts to dispose of these shares. However, due to securities law requirements limiting the number of shares that could be sold, the thin trading volume, the stock price lagging for a longer than expected period, and Corporation's own trading policy limiting sales of its stock by officers and Directors, you were unable to dispose of all your shares, except at a price substantially below Corporation's fair market value.

Before the end of the initial five-year period, you submitted a request to the Internal Revenue Service under section 4943(c)(7) of the Code for an additional five-year period within which to dispose of your Corporation shares. In your request, you described your plan for disposing of all your shares within an additional five-year period. You also submitted the plan to the Attorney General of your state, who approved this plan.

Based on the information submitted, we have determined that your plan to dispose of all of your Corporation shares within an additional five-year period can reasonably be expected to be carried out. Therefore, we conclude that you meet the requirements under section 4943(c)(7) of the Code for an extension of five years to dispose of all of your Corporation shares.

Ruling

Under section 4943(c)(7) of the Code, the period during which you may dispose of your Corporation shares is extended an additional five years, until Date b.

This ruling is based on the understanding there will be no material changes in the facts upon which it is based.

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.

This ruling is directed only to the organization that requested it. Section 6110(k)(3) of the Code provides it may not be used or cited by others as precedent.

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.

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 Internal Revenue Service, we are sending a copy of this letter to your authorized representative.

Sincerely,

Steven B. Grodnitzky
Manager, Exempt Organizations
Technical Group 1

Enclosure
Notice 437