



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

Release Number: **201105053**

Release Date: 2/4/11

Date: November 8, 2010

Contact Person:

Identification Number:

Telephone Number:

Employer Identification Number:

UIL: 4943.00-00

Legend:

A =

M =

N =

X =

Y =

Z =

Dear

This is in response to your ruling request, dated April 13, 2010. You are requesting an extension which would allow you an additional five years, as provided in section 4943(c)(7) of the Internal Revenue Code (Code), within which to dispose of your excess business holdings resulting from an unusually large bequest.

Facts:

You are an organization that has been 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). Under the terms of the N trust, as modified, upon the death of A, the successor trustees distributed all of A's M stock to you on x, after the audit of the estate tax return was completed. You currently own 90 percent of M's class A common stock, one of your directors holds the remaining ten percent and another director holds five percent of M's class B and five percent of M's class C common stock. You state that the two directors are disqualified persons as defined in section 4943(f)(4). All of the stock has equal voting rights.

You made diligent efforts to dispose of your shares of M within five years, but the size, complexity and diversity of the holdings, combined with other factors, made such disposition impossible, except at a price substantially below fair market value. M is one of the world's largest manufacturers and distributors of products in its industry, which relies on its end markets, sectors of the commercial construction market. M has two synergistic business divisions, its physical presence consists of its headquarters, two manufacturing facilities and

sales, and distribution facilities scattered throughout the U.S. and Canada. Four years ago, you began a six-month process to sell M by contacting over a hundred potential buyers. Even with reported growth trends, you only received an eight percent bid to contact ratio. Within four months, you entered into a non-binding letter of intent with a proposed buyer. Two months later, upon receiving reports from M's management that the current fiscal year would not meet previously forecasted levels, the proposed buyer made a final offer reflecting the decline, but the board rejected the offer and terminated the sale. Since the offer was at substantially below fair market value, the board believed that it would not have been in the best interests of its shareholders, including you, to pursue the sale.

You have implemented the following plan to strengthen the value of M:

1. A clear management succession plan.
2. A freeze of your pension plan.
3. Improvements in information technology and financial reporting.
4. Improvements in accounting for inventory and obsolescence.
5. Selective acquisition of assets/businesses to improve M's competitive position.

You state that you can begin another six-month sales process and complete a sale before the expiration of the requested five-year extension. Therefore, you are requesting a five-year extension of time under section 4943(c)(7) of the Code to dispose of your excess holdings in M. You forwarded a copy of this plan to your state Attorney General as required by section 4943(c)(7). Your state Attorney General does not oppose your request for a five-year extension from the Service.

Ruling Requested:

Pursuant to section 4943(c)(7) of the Code, you are granted a five-year extension of the five-year period in which to dispose of such portion of your interest in the stock of M such that your ownership does not constitute excess business holdings under section 4943.

Law:

Section 4943(a)(1) of the Code imposes a 10 percent 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 states 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 which 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.

Section 4943(c)(2)(A) of the Code states that, generally, 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)(6)(A) of the Code states that, except as provided in paragraph (5) (which is a transitional rule), if after May 26, 1969, there is a change in the holdings in a business enterprise (other than by purchase 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 five-year period beginning on the date of such change in holdings.

Section 4943(c)(7) of the Code states that the Secretary may extend for an additional five-year period the period under paragraph (6) 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) 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 such 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 described in clause (i) 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 from the Attorney General (or other appropriate state official) to such plan during such 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.

Section 53.4943-6(b)(1) of the Foundation and Similar Excise Tax Regulations (regulations) states that generally, 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) of the Code and in this section shall not commence until the date on which the distributions of such holdings from the estate or trust to the foundation occurs.

Analysis and Conclusion:

You are subject to section 4943 of the Code, which imposes a tax on the excess business holdings of private foundations. Generally, under section 4943(c)(2)(A), a private foundation is permitted to hold twenty percent of the voting stock in a business enterprise with any excess constituting excess business holdings. However, if, as is the case here, a private foundation acquires holdings in a business enterprise other than by purchase (e.g. by bequest from a will) which causes the foundation to have excess business holdings, then the interest of the foundation in such business enterprise shall be treated as held by a disqualified person (rather than the foundation) for a five-year period beginning on the date such holdings were acquired by the foundation under section 4943(c)(6)(A).

Under section 4943(c)(7) of the Code, however, the Service may extend the initial five-year period for disposing of excess business holdings for an additional five years if you establish that: (i) you made diligent efforts to dispose of your holdings within the initial five-year period but were unable to do so because of the size and complexity of such holdings, (ii) you submit a plan for disposing of all excess business holdings in the five-year extension period and submit such plan to the state Attorney General, and (iii) the Service determines that such plan can reasonably be expected to be carried out before the close of the extension period.

The original five-year period to dispose of your excess business holdings in M commenced on x, the date of distribution in accordance with section 53.4943-6(b)(1) of the regulations, and ends on y. Even though you diligently pursued the disposition of your excess business holdings in M, the size and complexity of your unusually large holding greatly affected your ability to dispose of your shares within the five-year period provided by section 4943(c)(6) of the Code. You submitted your request for an extension of the five-year period to the Service before the close of the initial five-year period as required by section 4943(c)(7)(B) of the Code with your plan to dispose of your holdings within the five-year extension period. It appears that you can reasonably expect to carry out your plan before the close of the extension period. You submitted your plan to your state Attorney General who did not oppose your request for extension. Based on the information you submitted, you have met the requirements of sections 4943(c)(7)(A) and (B) of the Code.

Based on the foregoing, we rule, as requested, as follows:

Under section 4943(c)(7) of the Code, the five-year period in which you may dispose of such portion of M shares in order to meet the requirements of section 4943(c)(1) is extended an additional five years, which ends on z.

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. 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. 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.

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,

Ronald J. Shoemaker
Manager, Exempt Organizations
Technical Group 2

Enclosure
Notice 437
Redacted ruling letter.