



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

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Contact Person:

Identification Number:

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Telephone Number:

Employer Identification Number:

UIL: 4943.00-00

Legend:

B =
M =
N =
P =
Q =
x =
Date 1 =
Date 2 =
Date 3 =
Date 4 =
Year 1 =
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Dear ,

We have considered your ruling request dated November 20, 2008 (as supplemented by your letter of January 22, 2010), in which you request a 5-year extension under § 4943(c)(7) of the Internal Revenue Code (the "Code") of the period to dispose of certain excess business holdings.

FACTS

M is an organization described in § 501(c)(3) of the Code, is classified as a private foundation under § 509(a), and is a private operating foundation as defined in § 4942(j)(3). M was incorporated on Date 1 as a nonprofit corporation under state Q law. M has three trustees, one of whom is B.

On Date 1, B funded M with a gift of 1,500x of the total 8,000x issued and outstanding shares of common stock of N (the "Shares"). After the gift of the Shares to M, B owned

a 62.1 percent interest in N, M owned an 18.8 percent interest in N, and P, N's employee stock ownership plan, owned a 19.1 percent interest in N. Insofar as B is a substantial contributor to M within the meaning of § 4946(a)(2) of the Code, and a foundation manager of M within the meaning of § 4946(b), the Shares would constitute excess business holdings within the meaning of § 4943(c) in the hands of M, except for the operation of § 4943(c)(6), which treats the Shares as held by a disqualified person during a 5-year period beginning on Date 1. Consequently, to avoid being treated as having excess business holdings in N, M was required to dispose of substantially all of the Shares within 5 years of Date 1, i.e., by Date 3, or to seek a 5-year extension of the original 5-year period under the provisions of § 4943(c)(7).

M states that despite significant and diligent efforts to dispose of the Shares within the 5-year period ending on Date 3, it was not able to do so absent a sale of the Shares at a price substantially below their historic market value. M attributes the difficulty of selling the Shares to the nature of N's assets and activities, prevailing market conditions, and the fact that the Shares represent a minority interest in a closely held business.

N is in the residential mortgage lending business. M states that, because of the slump in the mortgage lending market, business (franchise) values in the residential mortgage industry are substantially down, including the value of N. For example, the Shares were valued at \$0.01x per share on Date 1 (discounted from \$0.0106x due to their minority interest status), but had dropped to \$0.00163x per share (before discount) by Date 2.

M states that between Date 1 and Date 3 "[n]o buyer ever expressed interest in acquiring a minority shareholding interest, such as that of [M]." Thus, M determined that "[the] only realistic avenue for finding potential buyers of the [S]hares is through [N] and [B]," and states that "opportunities [to sell the Shares] have generally involved a sale of [N], in which [M] would sell its shares as part of the overall transaction."

M provides detailed information about N's efforts to sell its business to third party investors as a going concern during the 5 years ending Date 3. During this period, at least three significant efforts to sell N were made. However, these efforts were ultimately unsuccessful. M states that it became clear that "the marketplace of buyers was . . . weak, and [thus,] the bargaining power of those few potential buyers [was] unfairly strong." Therefore, B and the management of N concluded that greater value and better terms for N and its shareholders (which include M) could be realized by waiting to sell at a future date.

In addition to its efforts to sell the Shares as a part of the overall sale of N, M also states that it engaged in numerous discussions with P regarding a potential sale of all or part of the Shares. However, P "[was] not able to acquire [M's] shares . . . [and has not] been able to do so in the last 5 years" due to insufficient liquidity.

M states that it expects the market for N's shares to improve considerably over the 5-year period ending Date 4 (the "extension period"). M states that "as the financial market improves, and circumstances indicate that the time is right, [B] and the management of [N] plan to once again put [N] on the market." M plans to dispose of its shares in N within the extension period either as a part of a sale of N to a third party investor, through a sale of its minority interest to a third party investor, or through a sale of its shares to P, which M believes will be in a better financial position in the coming years. M states that it submitted this plan for disposing of the Shares during the

extension period to the Attorney General of Q, and that it will forward a copy of any response it receives from the Attorney General of Q to the Internal Revenue Service (the "Service").

RULING REQUESTED

M requests a 5-year extension to dispose of the Shares pursuant to § 4943(c)(7) of the Code.

LAW

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

Section 4943(c)(1) of the Code defines "excess business holdings," with respect to the holdings of any private foundation in any business enterprise, as 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 for the remaining holdings of the foundation in such enterprise to be permitted holdings.

Section 4943(c)(2)(A) of the Code provides that the permitted holdings of any private foundation in any incorporated business enterprise are 20 percent of the voting stock, reduced by 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 § 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 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 5-year period beginning on the date of such change in holdings.

Section 4943(c)(7) of the Code provides that the Secretary may extend for an additional 5 years the initial 5-year period under § 4943(c)(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 5-year period, and
 - ii. disposition within the initial 5-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 5-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 from the Attorney General (or other appropriate State official) to such plan during such 5-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.

ANALYSIS

M is a private foundation described in § 509(a) of the Code and, therefore, subject to the tax on excess business holdings imposed under § 4943(a). By M's own admission, the Shares would be treated as excess business holdings if not disposed of by Date 3. Because it has not been able to dispose of the Shares, M requests that the Service grant it a 5-year extension to dispose of the Shares under the provisions of § 4943(c)(7).

Based on the information submitted, it appears that M made diligent efforts to dispose of the Shares during the initial 5-year period ending Date 3. However, due to, among other reasons, the nature of N's assets and activities, the fact that the Shares represent a minority interest in a closely held business, and the substantial decline in the market value of the Shares resulting from prevailing economic conditions, M has not been able to dispose of the Shares, except at a price substantially below what M believes to be their fair market value. Thus, the requirements under § 4943(c)(7)(A) of the Code have been met.

Before the end of the initial 5-year period, M submitted a request to the Service under § 4943(c)(7) of the Code for an additional 5-years to dispose of the Shares. In its request, M described its plan for disposing of the Shares within the extension period. M submitted this plan to the Attorney General of Q, and stated that a copy of any response it receives will be sent to the Service. Thus, the requirements under § 4943(c)(7)(B) of the Code have been met.

Finally, based on the information submitted, it appears that M's plan to dispose of the Shares can reasonably be expected to be carried out before the close of the 5-year extension period. Thus, the requirement under § 4943(c)(7)(C) of the Code has been met.

Consequently, M meets the requirements under § 4943(c)(7) of the Code for an extension of 5 years to dispose of the Shares in N that constitute excess business holdings.

RULING

Accordingly, based on the information submitted, we rule as follows:

Under the provisions of § 4943(c)(7) of the Code, we grant M an additional 5-year period, ending on Date 4, to dispose of its excess business holdings in N.

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 the sections described. Because it could help resolve questions concerning your Federal income tax status, this ruling should be kept in your permanent records.

This ruling will be made available for public inspection under § 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 it may not be used or cited by others as precedent.

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,

Mary Jo Salins
Manager, Exempt Organizations
Technical Group 4

Enclosure
Notice 437