



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

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Contact Person:

Identification Number:

Telephone Number:

Employer Identification Number:

Section 4943 – Excise Taxes on Excess Business Holdings
4943.00-00 Excise Taxes on Excess Business Holdings

Section 501 – Exemption From Tax on Corporations, Certain Trusts, etc.
501.00-00 Exemption From Tax on Corporations, Certain Trusts, etc. (Exempt v. Not Exempt)

LEGEND:

Decedent A =

Decedent B =

Foundation =

School =

Court =

State =

Company =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Year =

Dear ,

This is in response to your request pursuant to § 4943(c)(7) of the Internal Revenue Code for an additional five years to dispose of certain excess business holdings.

FACTS

You are recognized as a § 501(c)(3) tax-exempt trust classified as a private foundation.

Decedent A's will established a qualified terminable interest property (QTIP) trust. Substantial amounts of real and personal property passed to the QTIP trust for the benefit of Decedent B during Decedent B's lifetime. Upon Decedent B's death, the remaining assets in the QTIP trust passed to you. Upon your termination, your assets will be distributed 10% to School and 90% to Foundation.

Decedent B died on Date 1. You represent that the executors of Decedent B's estate immediately commenced the administration of Decedent B's estate. Decedent B's timely filed Federal estate tax return was accepted by the Internal Revenue Service (the "Service") pursuant to an Estate Tax Closing Letter. The executors of Decedent B's estate filed the First and Final Account of the Trustees of the QTIP trust with the Court. Pursuant to an order of the Court, approving the First and Final Account, the assets of the QTIP trust were distributed to you on Date 2.

The QTIP trust held numerous valuable assets, including 100% of the stock of a holding company that owned groups of companies, with each group consisting of multiple wholly-owned subsidiaries. You represent that the stock of the holding company, which included Company, constituted excess business holdings as defined in § 4943(c)(1). Company is a real estate developer that owns a large parcel of land.

On Date 3, you sold all of the shares of various companies, representing over 95% of the value of your excess business holdings, to an unrelated third party. You represent that the stock of Company also was offered to prospective purchasers; however, no prospective purchasers expressed interest in Company.

As of Date 4, you continued to own Company, cash, and fixed income investments. You represent that the stock of Company is your only remaining excess business holding, and it is worth less than 5% of the total value of the excess business holdings originally received by you.

You represent that Company has made diligent and continuing efforts to dispose of its assets and that you have made diligent and continuing efforts to dispose of Company's stock. You believe that neither you nor Company have been able to dispose of the land owned by, or stock of, Company because of various "no growth" policies where the land is located, the current market for real property where the property is located, and the significant size of the real estate holdings of Company.

You represent that since Date 5, as an alternative to selling the land held by Company, you have engaged in extensive discussions with School to contribute the remaining assets of Company to School. School is a § 501(c)(3) tax-exempt educational institution. You state that as of the date of this request, School indicated that it wants to receive the assets of Company. You represent, however, that School requires additional time to perform its due diligence review. School did not complete its due diligence efforts in time for you to transfer the remaining assets of Company to School within the initial 5-year period provided in § 4943(c)(6) (§ 4943(c)(6) period).

Your plan to dispose of your remaining excess business holdings (Company) within the next five years is: (1) contribute Company to School, (2) if School does not accept the contribution, sell the assets or stock of Company, or (3) dispose of Company's assets through an auction concluded before the expiration of the 5-year extension requested herein. This plan was filed with the Attorney General of State, who responded with a no objection letter.

In your request for rulings, you stated that you did not believe that you would be able to dispose of your excess business holding (Company) within the § 4943(c)(6) period. You stated that if you were not to be granted an extension, you would be forced to sell your excess business holding through an immediate auction, realizing a value significantly below fair market, which would have been to the detriment of you and your beneficiaries – Foundation and School.

RULINGS REQUESTED

1. You requested a ruling that the § 4943(c)(6) period to dispose of the excess business holdings received by you from the QTIP trust commenced on Date 2.
2. You requested a ruling extending the § 4943(c)(6) period for disposing of excess business holdings pursuant to § 4943 for an additional five years pursuant to § 4943(c)(7) (§ 4943(c)(7) extension).

LAW

Section 4943(a)(1) imposes an excise tax on the excess business holdings of any private foundation in a business enterprise.

Section 4943(c)(1) provides 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)(6) provides, in pertinent part, that, if there is a change in the holdings in a business enterprise which causes a private foundation to have—

- (A) 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) provides that the Service may extend the § 4943(c)(6) period to dispose of excess business holdings for an additional five years where there is a 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 § 4943(c)(6) period, and (ii) disposition within the § 4943(c)(6) 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 § 4943(c)(6) 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 appropriate State official) and submits to the Secretary any response received by the private foundation from the Attorney General (or appropriate State official) to such plan during the § 4943(c)(6) period; and

(C) the Secretary determines that such plan reasonably can 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 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 § 4943(c)(6) period shall not commence until the date on which the distribution of such holdings from the estate or trust to the foundation occurs. Section 53.4943-6(b)(1) refers to rules relating to the determination of the date of distribution pursuant to the terms of a will or trust.

Section 53.4943-5(b)(1) provides that the date of distribution shall be deemed to occur no later than the date on which the trust or estate is considered to be terminated pursuant to § 1.641(b)-(3) of the Income Tax Regulations.

Section 1.641(b)-(3)(b) provides that the determination of whether a trust has terminated depends upon whether the property held in trust has been distributed to the persons entitled to succeed to the property upon termination of the trust rather than upon the technicality of whether or not the trustee has rendered its final accounting. A reasonable time is permitted after such event for the trustee to perform the duties necessary to complete the administration of the trust. Thus, if pursuant to the terms of the governing instrument, the trust is to terminate upon the death of the life beneficiary and the corpus is to be distributed to the remainderman, the trust continues after the death of the life beneficiary for a period reasonably necessary to a proper winding up of the affairs of the trust.

ANALYSIS

Ruling 1: Whether the § 4943(c)(6) period to dispose of excess business holdings received by you from the QTIP trust commenced on Date 2.

Pursuant to § 53.4943-6(b)(1), the § 4943(c)(6) period does not commence until the date of the distribution of holdings in a business enterprise, pursuant to the terms of a trust, from the trust to a foundation. Section 53.4943-5(b)(1) provides that the date of distribution is deemed to occur no later than the date on which the trust is considered to be "terminated" pursuant to § 1.641(b)-(3). Section 1.641(b)-(3)(b) provides that a trust terminates when the property held in trust is distributed to the persons entitled to the property.

The assets of the QTIP trust, including the excess business holdings, were distributed to you on Date 2.

Based on the information submitted and your representations, we have determined that the § 4943(c)(6) period to dispose of the excess business holdings received by you from the QTIP trust commenced on Date 2.

Ruling 2: Whether to grant you a § 4943(c)(7) extension to dispose of your excess business holdings (Company).

You stipulated that you are subject to § 4943, which imposes a tax on the excess business holdings of private foundations. Pursuant to § 4943(c)(6)(A), if a private foundation acquires holdings in a business enterprise by bequest and this acquisition causes the foundation to have excess business holdings, the interest of the foundation in the business enterprise is treated as held by a disqualified person (rather than by the foundation) for the § 4943(c)(6) period beginning on the date the foundation acquired the holdings.

The Service may grant you a § 4943(c)(7) extension if: (1) you made diligent efforts to dispose of the holdings during the § 4943(c)(6) period; (2) disposition within the § 4943(c)(6) period was not possible (except at a price substantially below fair market value) because of the size and complexity or diversity of the holdings; (3) you submitted to the Service and the appropriate state official a plan for disposing of the excess business holdings before the § 4943(c)(7) extension ends; and (4) the plan reasonably can be completed before the close of the § 4943(c)(7) extension.

During the § 4943(c)(6) period, you made diligent efforts to dispose of Company's holdings, as required by § 4943(c)(7)(A)(i). You sold the vast majority of your excess business holdings. You undertook sustained efforts to sell the assets or stock of Company, your sole remaining excess business holding. You have been in lengthy discussions with School about contributing Company to School. You represent that School likely will accept the contribution, however, School has not completed its due diligence efforts. Other than by contributing Company to School, disposition of Company is not possible now except at a price substantially below fair market value because of the size, complexity, and diversity of Company's holdings.

Before the end of the § 4943(c)(6) period you submitted a request to the Service pursuant to § 4943(c)(7) for a § 4943(c)(7) extension to dispose of Company or Company's assets. Additionally, you described your plan for disposing of Company or Company's assets. You also submitted your plan to the Attorney General of State, who sent you a no objection letter to your plan.

Based on the information submitted and your representations, we have determined that your plan to dispose of your excess business holdings within the § 4943(c)(7) extension period is reasonable. Accordingly, we conclude that you meet the requirements of § 4943(c)(7) for an extension of five years to dispose of your Company holdings.

RULINGS

Based on the information submitted, we rule as follows:

1. The § 4943(c)(6) period to dispose of your excess business holdings began on Date 2.
2. The period during which you must dispose of your excess business holdings in Company is extended an additional five years to Date 6.

Because you stipulated that you are subject to § 4943, we are not ruling on whether your interest in Company constitutes "excess business holdings" under § 4943(c)(1).

This ruling will be made available for public inspection pursuant to § 6110 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) 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.

Sincerely,

Andrew F. Megosh, Jr.
Manager, Exempt Organizations
Guidance Group 2

Enclosure: Notice 437