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May 19, 2016

Founder incorporated you as a State nonprofit corporation on Date 1. You are exempt from federal income tax under section 501(c)(3) and are classified as a private foundation within the meaning of section 509(a).

On Date 2, you acquired 100% of the stock of Company as the sole beneficiary of a revocable trust that was formed by Founder, following the closing of the estate of Founder. Company owns an X% membership interest in multiple joint ventures that were formed to develop, market and sell Development Project. Developer, an unrelated third party, owns the remaining interests. Your ownership of stock in Company constitutes excess business holdings under section 4943(c)(1). Your initial five-year period for disposing of excess business holdings ended on Date 3.

You have been trying to dispose of your interest in Company since Year. During the initial five-year period for disposing of excess business holdings under section 4943(c)(6), Company and Developer attempted to develop, market and sell the Development Project. Subsequently, disputes arose between Company and Developer over the development and sale of the Development Project. These disagreements resulted in litigation in County Court, which has adversely affected your ability to sell the Company. You received a number of inquiries about marketing and selling the Development Project and buying your interest in Company, including informal offers to purchase. These offers to purchase were substantially below fair market value.

Because of the size, value, nature and complexity of Development Project, you have been unable to complete the sale of Company within the prescribed five-year period.

Prior to the end of the initial five-year period for disposing of excess business holdings under section 4943(c)(6), you submitted a request to the Internal Revenue Service for an extension of five years to complete the required disposition.

You have submitted a plan for disposing of the Company within five years to the attorney general of State. The first step of your proposed plan is to resolve the litigation. Company submitted an offer to Developer to acquire all of its interests in Development Project. If Developer accepts this offer, Company will be in a position to market and sell the Development Project free of the restraints of the joint venture agreements. Company and Developer also are negotiating the appointment of an experienced, third-party, chief restructuring officer to the boards of the joint ventures. The chief restructuring officer would have authority to make decisions about the Development Project and prepare it for sale. If these two options are not successful, Company will petition the County Court to appoint a receiver to sell the Development Project.

After the litigation has been resolved, you will retain a broker with expertise in marketing and selling the Development Project to potential buyers. You will make diligent efforts to dispose of the Company stock or Company's membership interests in the joint ventures. You will provide a copy to the Internal Revenue Service of any response you receive from the attorney general. Based on the documentation submitted and the facts and representations described above, you requested the following rulings.

RULING REQUESTS

1. Extend for an additional five years the period of time for disposing of excess business holdings under section 4943(c)(7).
2. Your interest in Company will not be subject to the section 4943 (a)(1) tax during the extension period.

LAW

Section 4943(a)(1) imposes a tax on the value of 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)(2) provides that the permitted holdings of any private foundation in an incorporated business enterprise are twenty percent (20%) of the voting stock, reduced by the percentage of the voting stock owned by all disqualified persons.

Section 4943(c)(3)(A) provides that the permitted holdings of a private foundation in any business enterprise which is not incorporated shall be determined under regulations prescribed by the Secretary. Such regulations shall be consistent in principle with paragraphs (2) and (4), except that in the case of a partnership or joint venture, “profits interest” shall be substituted for “voting stock”, and “capital interest” shall be substituted for “nonvoting stock.”

Section 53.4943-3(c)(2) of the Federal Income Tax Regulations provides that in the case of a partnership or joint venture, the terms “profits interests” and “capital interest” shall be substituted for “voting stock” and nonvoting stock,” wherever those terms appear in paragraph (b) of this section. The interest in profits of such foundation (or disqualified person) shall be determined in the same manner as its distributive share of partnership taxable income. In the absence of a provision in the partnership agreement, the capital interest of such foundation (or such disqualified person) in a partnership shall be determined on the basis of its interest in the assets of the partnership which would be distributable to such foundation (or disqualified person) upon its withdrawal from the partnership, or upon liquidation of the partnership, whichever is greater.

Section 4943(c)(6) provides generally that, if 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) provides that the Internal Revenue Service may extend the section 4943(c)(6) period to dispose of excess business holdings for an additional five years where there is 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 section 4943(c)(6) 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 Company stock from Founder, a disqualified person under section 4946. The Company stock constitutes excess business holdings under section 4943(c)(1). Therefore, you were required under section 4943(c)(6) to dispose of the Company stock during the initial five-year period ended on Date 3.

During the initial five-year period pursuant to section 4943(c)(7)(A)(i) you made diligent efforts to dispose of the Company stock. However, due to the litigation between

Company and Developer, you have been unable to dispose of the Company stock. Because of the size, value, nature and complexity of Development Project, disposition of the Company stock within the initial five-year period was not possible, except at a price substantially below fair market value, pursuant to section 4943(c)(7)(A)(ii). Before the end of the initial five-year period, you submitted a request to the Internal Revenue Service under section 4943(c)(7) for an additional five-year period within which to dispose of your Company stock and you described your plan for disposing of Company stock. Your plan presents several alternatives for resolving the litigation and completing the sale of Company or its interests in the joint venture within the requested extension period. You also submitted the plan to the Attorney General of State, and will provide a copy of any response to the Internal Revenue Service.

Based on the information submitted, we have determined that your plan to dispose of your excess business holdings in Company can reasonably be expected to be carried out before the close of the extension period. Therefore, we conclude that you meet the requirements under section 4943(c)(7) for an extension of an additional five years to dispose of these excess business holdings.

CONCLUSION

Based on the information submitted, we have determined that your plan to dispose of your excess business holdings in Company can reasonably be expected to be carried out before the close of the extension period. Therefore, you meet the requirements under section 4943(c)(7) for an additional five year period to dispose of your excess business holdings in Company. Your excess business holdings in Company will not be subject to tax under section 4943(a)(1) if you dispose of them before the close of the extension period.

This letter does not address the applicability of any section of the Code or Regulations to the facts submitted other than with respect to the sections specifically described. This letter does not constitute a determination that Foundation is exempt from tax under section 501(a) or is a private foundation under section 509(a). Because it could help resolve questions concerning your federal income tax status, this letter should be kept in your permanent records.

This letter will be made available for public inspection under section 6110 of the Code after certain deletions of identifying information are made. For details, see the enclosed Notice 437, Notice of Intention to Disclose. A copy of this letter 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 the Notice 437.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an individual with authority to bind the taxpayer and upon the understanding that

there will be no material changes in the facts. This office has not verified any of the material submitted in support of the request for rulings, and such material is subject to verification on examination.

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

A copy of this letter must be attached to any tax return to which it is relevant. Alternatively, if Foundation files its return electronically, it may satisfy this requirement by attaching a statement to its return that provides the date and control number of this letter.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative(s).

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,

Don R. Spellmann
Senior Counsel
Exempt Organizations Branch 3
(Tax Exempt & Government Entities)
Internal Revenue Service
Washington, D.C.

Enclosure:
Notice 437

cc: