Internal Revenue Service

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Department of the Treasury
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Person To Contact:
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Telephone Number:

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Date:
July 29, 2021

Foundation	=
Public Charity	=
State	=
Trust	=
Decedent	=
Company X	=
Company Y	=
Z	=
Year A	=
Year B	=
Year C	=
D%	=
Date 1	=
Date 2	=

Dear :

This letter responds to a request for rulings from your authorized representatives dated February 2, 2021. The request involves rulings under section 4943 of the Internal Revenue Code.[1]

Facts

Foundation was established in Year A in State as a charitable trust. Public Charity was established in Year B in State as a charitable corporation. Both are recognized as tax-exempt organizations described in section 501(c)(3). Foundation is classified as a

[1] The Internal Revenue Code of 1986, as amended, to which all subsequent section references are made unless otherwise indicated.

private foundation under section 509(a), and Public Charity as a medical research organization under sections 509(a)(1) and 170(b)(1)(A)(iii).

Trust was established in Year C in State under the will of Decedent. When the last of Trust's income beneficiaries dies, Trust will terminate and distribute part of its remaining assets to Foundation. All of Trust's assets are derived from amounts transferred in trust before May 27, 1969, as described in section 4947(a)(2)(C) and Treas. Reg. § 53.4947-1(c)(5)(i). Taxpayer represents that Trust is not a disqualified person with respect to Foundation (based upon Z).

For many years, Foundation's trustees considered the possibility of selling or assigning all or part of Foundation's remainder interest in Trust. On Date 1, Foundation obtained a declaratory judgment holding that, with the consent of Trust's trustee, Foundation is allowed to sell or assign all or a portion of its income or residuary interest in Trust. Foundation has decided to assign most of its residuary interest in Trust to Public Charity.

The rulings requested involve an assignment from Foundation to Public Charity of most of Foundation's residuary interest in Trust, which owns significant assets, including a significant percentage of shares of stock of Company X, a holding company that owns 100% of Company Y, a business enterprise.

On Date 2, Foundation entered into an assignment agreement (Assignment), pursuant to which Foundation assigned to Public Charity its entire residuary interest in Trust, except for Foundation's right to receive from Trust the following assets, if still owned by Trust upon the death of the last income beneficiary: (a) a particular asset in which Foundation currently owns an undivided interest, and which Foundation intends to contribute to State; and (b) the number of shares of Company X stock that, when combined with other shares of Company X stock owned by Foundation on such date, would cause Foundation's total interest in Company X stock to equal D%, a permissible percentage under the present holdings rules of section 4943. Foundation retained the right to rescind the Assignment if it fails to receive the requested rulings in this ruling request. Although the Assignment authorizes Public Charity not to sell the Company X stock received in the assignment (to respect the intent and wishes of Decedent under the terms of the will), the Assignment does not restrict Public Charity from disposing of the stock.

Taxpayer's representative states that Foundation's current holdings of Company X stock do not constitute excess business holdings as a result of the present holdings rules under section 4943(c).

Rulings Requested

Foundation requests the following rulings:

1. Any Company X stock that Public Charity receives from Trust pursuant to the Assignment and the terms of the will of Decedent will not be treated for purposes of section 4943 as being held by Foundation.

2. While Public Charity qualifies as a medical research organization described in section 170(b)(1)(A)(iii), any Company stock that Public Charity receives from Trust pursuant to the Assignment and the terms of the will of Decedent will not be treated for purposes of section 4943 as being held by a disqualified person with respect to Foundation.

Law

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

Section 4943(c)(1) defines excess business holdings as, 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(d)(1) provides that in computing the holdings of a private foundation or a disqualified person in a business enterprise, any stock or other interest owned, directly or indirectly, by or for a corporation, partnership, estate, or trust shall be considered as being owned proportionately by or for its shareholders, partners, or beneficiaries. The preceding sentence shall not apply with respect to an income or remainder interest of a private foundation in a trust described in section 4947(a)(2), but only if, in the case of property transferred in trust after May 26, 1969, such foundation holds only an income interest or only a remainder interest in such trust.

Section 53.4943-2(a)(1)(ii) provides that excess business holdings acquired other than by purchase will not be subject to section 4943 tax if the foundation disposes of the excess within 90 days from the date the foundation knows or has reason to know of the event that caused it to have excess holdings.

Section 53.4943-2(a)(1)(iv) provides that if a private foundation disposes of an interest in a business enterprise but imposes any material restrictions or conditions that prevent the transferee from freely and effectively using or disposing of the transferred interest, then the transferor foundation will be treated as owning such interest until all such restrictions or conditions are eliminated (regardless of whether the transferee is treated for other purposes of the Code as owning such interest from the date of the transfer). However, a restriction or condition imposed in compliance with federal or state securities laws, or in accordance with the terms or conditions of the gift or bequest through which such interest was acquired by the foundation, shall not be considered a material restriction or condition imposed by a private foundation.

Section 53.4943-8(b)(2)(ii) provides that in the case of an interest in a business enterprise which was transferred to a trust described in section 4947(a)(2) (without regard to section 4947(a)(2)(C)) on or before May 26, 1969, for the benefit of a private foundation, no portion of such interest shall be considered as owned by the foundation until it is actually distributed to the foundation or until the trust ceases to be so described.

Section 53.4946-1(a)(7) provides that for purposes of Chapter 42 a disqualified person shall not include an organization described in section 509(a)(1).

Analysis

Requested Ruling 1

The constructive ownership rules of section 4943(d)(1) and regulations thereunder provide that a corporation, partnership, estate, or trust is generally considered as owned proportionately by or for its shareholders, partners, or beneficiaries. In this case, Public Charity, a charitable corporation, has no shareholders and no definite beneficiaries, and thus Public Charity's business holdings would not be considered as owned by Foundation. We also note that Foundation is not considered to currently own a proportionate share of the business holdings of Trust by reason of Foundation's residuary interest, per § 53.4943-8(b)(2)(ii).

Another situation in which an interest in a business enterprise held by a third party may be treated as held by a private foundation is set forth in § 53.4943-2(a)(1)(iv). This regulation treats a private foundation as retaining interests that are excess business holdings if the foundation transfers such interests but imposes any material restrictions or conditions that prevent the transferee from freely and effectively using or disposing of the transferred interest until such restrictions or conditions are eliminated. We do not consider the Assignment's precatory referencing of Trust settlor's desire not to sell the stock as a material restriction or condition, and the Assignment imposes no other material restrictions or conditions (other than Foundation's right to rescind the assignment if it does not receive the requested rulings).

Requested Ruling 2

Under § 53.4946-1(a)(7), a disqualified person for purposes of section 4943 does not include a medical research organization under sections 509(a)(1) and 170(b)(1)(A)(iii). And as discussed above, Public Charity has no shareholders or beneficiaries to constructively own Public Charity's business holdings. Thus, as long as Public Charity is described in section 170(b)(1)(A)(iii), its holdings of Company X stock will not be treated as held by a disqualified person with respect to Foundation.

Rulings

Based solely on the facts and representations submitted by Foundation, we rule as follows:

1. Any Company X stock that Public Charity receives from Trust pursuant to the Assignment and the terms of the will of Decedent will not be treated for purposes of section 4943 as being held by Foundation.

2. While Public Charity qualifies as a medical research organization described in section 170(b)(1)(A)(iii), any Company stock that Public Charity receives from Trust pursuant to the Assignment and the terms of the will of Decedent will not be treated for purposes of section 4943 as being held by a disqualified person with respect to Foundation.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by penalty of perjury statements executed by an individual with authority to bind the taxpayer, and upon the understanding that there will be no material changes in the facts. While this office has not verified any of the material submitted in support of the request for rulings, such material is subject to verification on examination.

The Associate Office will revoke or modify a letter ruling and apply the revocation retroactively if: (1) there has been a misstatement or omission of controlling facts; (2) the facts at the time of the transaction are materially different from the controlling facts on which the ruling is based; or (3) the transaction involves a continuing action or series of actions and the controlling facts change during the course of the transaction. See Rev. Proc. 2021-1, 2021-1 IRB 1, § 11.05.

Except as specifically set forth above, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter, and no ruling is granted as to whether Public Charity qualifies as an organization described in section 170(b)(1)(A)(iii) or otherwise in section 501(c) or section 509(a).

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

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

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,

Theodore R. Lieber
Senior Tax Law Specialist
Exempt Organizations Branch 1
(Employee Benefits, Exempt Organizations, and Employment Taxes)

cc: