

Internal Revenue Service

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Date:
September 23, 2022

LEGEND:

Taxpayer =
State =
Individuals =
Community =
Granddaughter =
Trust =
Entity 1 =
Entity 2 =
Industry =
Date 1 =
Date 2 =
Date 3 =
Date 4 =
Date 5 =
A =
B =
C =
Z =

Dear :

This letter ruling is in response to a request from your authorized representative dated March 11, 2022, and subsequent documentation requesting an extension of an additional five years under Internal Revenue Code ("IRC") section 4943(c)(7) for disposing of certain excess business holdings. Taxpayer represents the facts as

follows.

FACTS

Taxpayer was incorporated as a State nonprofit corporation. Taxpayer is exempt from federal income tax under IRC section 501(a) as an organization described in IRC section 501(c)(3) and is classified as a private foundation under IRC section 509(a). Taxpayer was created by Individuals to support the domestic and international Community and various charitable organizations. Individuals were substantial contributors to Taxpayer within the meaning of IRC section 507(d)(2), and therefore disqualified persons with respect to Taxpayer under IRC section 4946(a)(1)(A).

As a result of Individuals' death, Taxpayer received A shares of Entity 1 common voting stock from Trust, a disqualified person, on Date 1, which Taxpayer represents is an unusually large testamentary gift or bequest. Additionally, on Date 2, Granddaughter, who is the granddaughter of one of the Individuals, and who serves as a co-trustee of Taxpayer, received a testamentary disposition from Trust of B shares of Entity 1 common voting stock. Granddaughter is also a disqualified person under IRC section 4946. The combined shares of Taxpayer and Granddaughter represent approximately C percent of Entity 1's outstanding capital stock and are a minority interest in Entity 1. As a result of the testamentary gift or bequest of the A shares, Taxpayer has excess business holdings of Entity 1 under IRC section 4943(c)(1).

On Date 3, also as a result of Individuals' death, Taxpayer received from Trust an approximate Z percent membership interest in Entity 2, an LLC, which taxpayer represents is an unusually large testamentary gift or bequest. As a result of the testamentary gift or bequest of the LLC membership interest, which is a minority interest, Taxpayer has excess business holdings of Entity 2 under IRC section 4943(c)(1).

Taxpayer has encountered several obstacles in its effort to dispose of its excess business holdings. Both the shareholder's agreement of Entity 1 and operating agreement of Entity 2 contain significant restrictions on transfer of the Taxpayer's interest in these entities, including the requirement that any buyer be approved by State regulatory authorities, making a sale of Taxpayer's minority interest in these entities difficult. In addition, both Entity 1 and Entity 2 are in the Industry, which is complex and highly regulated and therefore complicated the sale of Taxpayer's interests. Further, Taxpayer states that management of the two entities was adversarial to Taxpayer for several years, and therefore depressed the value of Taxpayer's interests in them and complicated their potential sale. Also, the COVID-19 pandemic and related governmental restrictions have had a significant negative economic impact on the two entities and have hindered the ability of the Taxpayer to obtain fair market value for its interest in the entities. Finally, Entity 2 has been unable to operate for some time due to its inability to obtain required governmental approvals and, despite Entity 2's efforts, it appears unlikely that it will be able to obtain these approvals.

Despite the obstacles noted above, Taxpayer represents that it has made diligent efforts during the initial five-year period to dispose of its interests in Entity 1 and Entity 2. Taxpayer states that it pursued a potential sale of its shares in Entity 1 to a third party, but the transaction was not completed, primarily due to the significant transfer restrictions mentioned above. In addition, Taxpayer proposed a plan of recapitalization to convert sufficient Entity 1 stock from voting to nonvoting shares to reduce its and Granddaughter's aggregate percentage ownership of shares of voting stock to the permitted 20 percent or less threshold. However, despite showing early promise, these efforts failed due to Taxpayer's adversarial relationship with Entity 1 management.

Taxpayer continues to be diligent in its efforts to dispose of its excess business holdings and has a plan of disposition for both Entity 1 and Entity 2. With respect to Entity 1, after its recapitalization plan recently failed, Taxpayer states that it will pursue a sale of a sufficient number of Entity 1 shares to reduce its and Granddaughter's aggregate percentage ownership of shares of voting stock to the permitted 20 percent or less threshold. Taxpayer indicates that it has a plan in place to identify prospective buyers. First, it will engage in private discussions with several other interested Entity 1 shareholders to obtain an offer for the sale of its shares. Second, it will solicit offers from other Entity 1 shareholders. Finally, it will solicit offers from outside third parties. Taxpayer states that it is currently engaged in ongoing discussions with multiple Entity 1 shareholders regarding the potential sale of some its shares and is also aware of other potential outside third-party purchasers. Additionally, Taxpayer has obtained an appraisal of its interest in Entity 1, which it will update once a purchaser has been identified and the parties are further along in negotiations.

Taxpayer states that as Entity 2's ongoing efforts to obtain regulatory approval to resume operations have not been successful and Taxpayer anticipates that Entity 2's management will liquidate. Taxpayer would receive a share of the net proceeds in liquidation and no longer have excess business holdings. However, if Entity 2 is able to obtain the necessary approval to operate, Taxpayer plans to sell a sufficient amount of its membership interest in Entity 2 so that it will not hold more than 20 percent of the total membership interest in Entity 2.

Taxpayer's initial five-year period for disposing of excess business holdings under IRC section 4943(c)(6) ended on Date 4 for Entity 1 and will end on Date 5 for Entity 2. Prior to the end of these initial five-year periods under IRC section 4943(c)(6), Taxpayer submitted a plan to the Internal Revenue Service for disposing of the excess business holdings in these two entities. Taxpayer has also submitted this plan to the State attorney general and provided the State attorney general's response to the plan to the Internal Revenue Service.

Based on the documentation submitted and the facts and representations described above, Taxpayer requested the following ruling.

RULING REQUEST

1. Extend for an additional five years the period of time for disposing of Taxpayer's excess business holdings under IRC section 4943(c)(7).

LAW

IRC section 4943(a)(1) imposes a tax on the value of excess business holdings of any private foundation in a business enterprise.

IRC 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 that 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.

IRC section 4943(c)(2) provides that the permitted holdings of any private foundation in an incorporated business enterprise are 20 percent of the voting stock, reduced by the percentage of the voting stock owned by all disqualified persons.

IRC section 4943(c)(6) generally provides that if there is a change in a private foundation's holdings in a business enterprise (other than by purchase by the private foundation or by a disqualified person) that 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.

IRC section 4943(c)(7) provides that the Secretary may extend the IRC section 4943(c)(6) period to dispose of excess business holdings for an additional five years 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) it made 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 the 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 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 during the 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.

ANALYSIS

Taxpayer received a gift or bequest of Entity 1 stock and Entity 2 membership interest from Individuals through Trust, both disqualified persons with respect to Taxpayer under IRC section 4946(a)(1). Taxpayer's ownership of the Entity 1 stock and Entity 2 membership interest constitutes excess business holdings under IRC section 4943(c)(1), and Taxpayer received the stock and membership interest other than by purchase by Taxpayer or by disqualified persons with respect to Taxpayer. As a result, IRC section 4943(c)(6) provides Taxpayer with an initial five-year period to dispose of its excess business holdings, which ended on Date 4 for Entity 1 and will end on Date 5 for Entity 2.

The shares of stock in Entity 1 and membership interest in Entity 2 received by Taxpayer represent a significant portion of Entity 1's outstanding capital stock and Entity 2's total membership interest. Both entities are in Industry, which is complex and highly regulated. Accordingly, Individuals' gift of Entity 1 stock and Entity 2 membership interest to Taxpayer represents an unusually large gift of diverse business holdings with a complex corporate structure within the meaning of IRC section 4943(c)(7).

During the initial five-year period, Taxpayer has made diligent efforts to dispose of its excess business holdings. However, it has been unable to do so for a variety of reasons, including significant transfer restrictions on its interests in the entities, the complex and highly regulated nature of Industry, an adversarial relationship with management of the two entities, economic issues relating to the COVID-19 pandemic, and the inability of one of the entities to operate because it lacked governmental approvals.

Before the end of the initial five-year period for both entities, Taxpayer submitted a request seeking an additional five-year period within which to dispose of its excess business holdings in Entity 1 and Entity 2 along with a plan for disposing all of the excess business holding during the extension period. Taxpayer's plan with respect to Entity 1 is to pursue a sale of a sufficient number of Entity 1 shares to reduce its and Granddaughter's voting stock shares to or below the permitted 20 percent threshold. With respect to Entity 2, Taxpayer's plan is to either receive the liquidation proceeds from Entity 2 if it is unable to obtain regulatory approval to resume operations, in which case Taxpayer will no longer have excess business holdings, or, if Entity 2 receives approval to resume operations, sell a sufficient amount of its membership interest so that it will hold no more than the permitted 20 percent of the total membership interest in Entity 2.

Taxpayer has also submitted its plan to the State attorney general and provided the State attorney general's response to the plan to the Internal Revenue Service.

RULING

Based on the facts and representations submitted by Taxpayer, we have determined that Taxpayer's plan to dispose of its excess business holdings in Entity 1 and Entity 2 can reasonably be expected to be carried out before the close of the extension period.

Therefore, we conclude that Taxpayer meets the requirements under IRC section 4943(c)(7) for an extension of an additional five years to dispose of these excess business holdings. Consequently, Taxpayer's excess business holdings in Entity 1 and Entity 2 will not be subject to tax under IRC section 4943(a)(1) if Taxpayer disposes of them before the close of the extension period.

The rulings contained in this letter are based upon information and representations submitted by or on behalf of Taxpayer and accompanied by penalty of perjury statements executed by an individual with authority to bind 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 these rulings, it is subject to verification on examination. The Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes) will revoke or modify a letter ruling and apply the revocation retroactively if there has been a misstatement or omission of controlling facts; the facts at the time of the transaction are materially different from the controlling facts on which the ruling was based; or, in the case of a transaction involving a continuing action or series of actions, the controlling facts change during the course of the transaction. See Rev. Proc. 2022-1, 2022-1 I.R.B. 1, section 11.05.

This letter does not address the applicability of any section of the Code or Regulations to the facts submitted, other than those sections specifically described. Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically, no opinion is expressed as to the existence or acts of disqualified persons with respect to Taxpayer, nor is any opinion expressed regarding Taxpayer's plan of disposition beyond the rulings provided herein.

This ruling is directed only to the taxpayer requesting it. IRC section 6110(k)(3) 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 Taxpayer's authorized representative.

A copy of this letter must be attached to any income tax return to which it is relevant.

Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

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.
Senior Tax Law Specialist
Exempt Organizations Branch 2
Employee Benefits, Exempt Organizations, and
Employment Taxes

cc: