

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **202342002**
Release Date: 10/20/2023
Index Number: 4943.03-01

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:EEE:EOET:EO1
PLR-100883-23

Date:
July 03, 2023

LEGEND:

Taxpayer =
State =
Donor =
Company =

Date 1 =
Date 2 =
Date 3 =
Date 4 =
X =

Dear :

This letter responds to a request from Taxpayer’s authorized representative dated December 23, 2022, requesting additional time to dispose of excess business holdings under section 4943(c)(7) of the Internal Revenue Code.¹ Taxpayer represents the facts as follows.

FACTS

Taxpayer was incorporated as a State nonprofit corporation on Date 1. It is exempt from federal income tax under section 501(a) as an organization described in section 501(c)(3) and is classified as a private foundation under section 509(a). Company is a holding company of subsidiaries that provide Medicare-certified hospice and home health care services in six states. Company is treated as a partnership for federal tax purposes. It has numerous subsidiaries that operate under various regulatory regimes. Donor is a disqualified person under section 4946(a)(1)(A).

¹ All subsequent section references are to the Internal Revenue Code of 1986, as amended, unless otherwise specified.

Donor gave Taxpayer a 50 percent membership interest in Company on Date 2. Donor simultaneously gave X a 25 percent membership interest in Company. Donor retained a 25 percent membership interest in Company after the Date 2 gifts to Taxpayer and X. The membership interests given and retained constitute both a profits interest and a capital interest in Company. Taxpayer states that its membership interest in Company is the largest gift it has ever received, being larger than the combined value of all other gifts that it has received. Like Donor, X and Company are disqualified persons under section 4946(a)(1).

Taxpayer recognized that Donor's gift caused it to have excess business holdings in Company under section 4943(c)(1). Thereafter, Taxpayer engaged a professional advisor on Date 3, seeking advice and help selling its interest in Company. The advisor actively marketed Company, and in the ensuing three years the advisor identified four possible buyers, each of which executed a letter of intent to purchase Taxpayer's interest in Company. For various reasons, however, none of the subsequent negotiations resulted in a sale. Taxpayer states that the potential buyers had concerns stemming from, among other things, Company's complex corporate structure, as well as an inability to agree on a sale price that was not substantially below Company's fair market value. Taxpayer also states that the COVID-19 pandemic and related governmental restrictions had a negative impact on Company's industry, which made selling Taxpayer's interest in Company more difficult.

Taxpayer intends to continue working with the advisor to sell its interest in Company. In addition, Taxpayer sought assistance from a law firm to help identify actions that might facilitate a sale of its interest in Company. Taxpayer has implemented personnel and governance changes at Company based on recommendations of the advisor and law firm that it expects will enable a future sell. Taxpayer is optimistic that, with help from the advisor and the law firm, it will sell its interest in Company during the extension it seeks, particularly now that most of the hardships caused by the Covid-19 pandemic have passed.

Taxpayer's request under section 4943(c)(7) was submitted prior to Date 4, and Taxpayer notified State's attorney general as the statute requires.

RULING REQUESTS

1. Taxpayer requests a ruling granting it an additional five-year period to dispose of its excess business holdings in Company under section 4943(c)(7).
2. Taxpayer also seeks confirmation that its interest in Company will not be taxed under section 4943(a)(1) during the extension period.

LAW

Section 4943(a)(1) imposes a tax on the excess business holdings of a private foundation.

Section 4943(c)(1) provides that the term excess business holdings means the amount of stock or other interest in a business enterprise that the foundation would have to dispose of to a person other than a disqualified person for the foundation's remaining holdings in such enterprise to be permitted holdings.

Section 4943(c)(2)(A) provides that the permitted holdings of a private foundation in an incorporated business enterprise are 20 percent of the voting stock, reduced by the percentage of voting stock in the enterprise owned by all the foundation's disqualified persons. Permitted holdings include nonvoting stock held by the private foundation in any case in which all disqualified persons together do not own more than 20 percent of the voting stock of the incorporated business enterprise.

Section 4943(c)(3)(A) provides that, for purposes of section 4943(c)(2), "profits interest" is substituted for "voting stock" and "capital interest" is substituted for "nonvoting stock" when the enterprise is a partnership or joint venture.

Section 4943(c)(6) 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 shall be treated as held by a disqualified person during the five-year period beginning on the date of such change.

Section 4943(c)(7) provides that the Secretary may extend the 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 during 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 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

Donor and X are disqualified persons with respect to Taxpayer under section 4946(a)(1). Donor gave Taxpayer a 50 percent membership interest in Company on Date 2. Taxpayer represents that the membership interest constituted a 50 percent profits interest and a 50 percent capital interest in Company. The gift caused Taxpayer to have excess business holdings under section 4943(c), because Taxpayer had no permitted holdings after the reduction required by section 4943(c)(2)(A), as modified by section 4943(c)(3)(A). Because Taxpayer acquired the excess business holdings by gift, Taxpayer had until Date 4 to dispose of those holdings by operation of section 4943(c)(6). Although it tried, Taxpayer failed to sell its interest in Company by Date 4. Nevertheless, Taxpayer satisfies the requirements under section 4943(c)(7) and warrants additional time to dispose of its excess business holdings in Company.

As required under section 4943(c)(7), Taxpayer has established that the membership interest in Company was an unusually large gift involving an entity with a complex corporate structure. In addition, Taxpayer made diligent efforts to sell its interest in Company during the five-year period that ended on Date 4, having sought assistance from a professional advisor who facilitated negotiations with four potential buyers.

Taxpayer timely sought additional time to dispose of its holdings in Company, and it has since embarked on a revised plan to achieve that result by collaborating with the advisor and a law firm. Given the advisor's past success attracting potential buyers and the addition of legal counsel, it is reasonable to believe, considering the facts of this case, that Taxpayer will prevail in its quest to sell its interest in Company during the period it seeks. Taxpayer timely submitted its disposition plan to the State attorney general, as section 4943(c)(7) requires.

RULING

Based on the facts and representations submitted, we conclude that Taxpayer satisfies the requirements under section 4943(c)(7) for an additional five years to dispose of its excess business holdings in Company. We also confirm that Taxpayer's excess business holdings in Company will not be subject to tax under section 4943(a)(1) during the period granted by this ruling.

The ruling contained in this letter is based on information and representations submitted on behalf of Taxpayer and accompanied by penalty of perjury statements executed by an individual with authority to bind Taxpayer and on the understanding that there will be no material changes in the facts. While this office has not verified the material submitted in support of the request for this ruling, 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. 2023-1, 2023-1 I.R.B. 1, section 11.05.

This letter does not address the applicability of any section of the Internal Revenue Code or Treasury Regulations to the facts submitted, other than the 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 involving section 4941 or any disqualified person with respect to Taxpayer. Furthermore, no opinion is expressed regarding Taxpayer's plan of disposition beyond the ruling provided herein.

The ruling in this letter is directed only to Taxpayer. 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. If Taxpayer files its returns electronically, it can satisfy this requirement by attaching a statement to its return providing the date and control number of this letter.

Please address questions about this letter to the person identified as the person to contact in the heading of this letter.

Sincerely,

Kenneth M. Griffin
Chief
Exempt Organizations Branch 3
Employee Benefits, Exempt Organizations, and
Employment Taxes

cc: