200040037 UIL 4943.04-00

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

Date: JUL 1 2 2000

Contact Person:

ID Number:

Telephone Number:

OP:E:EO:T2

Employer Identification Number:

Legend: W =
X =
Y =
Z =

Dear Sir or Madam:

This is in reply to your letter of November 24, 1999, requesting a five year extension under the provisions of section 4943(c)(7) of the Internal Revenue Code of the period within which a private foundation normally is allowed to dispose of excess business assets acquired by gift.

You have been recognized as exempt under section 501(c)(3) of the Code and are a private foundation within the meaning of section 509(a). You are the successor to W, a private foundation which was established by X.

The majority of the assets you hold are shares of stock in Y that X had contributed to W. In 1995, X made an additional contribution of shares of stock in Y to W. As a result of this gift W's holdings in Y exceeded the 2 percent de minimis amount of permitted holdings allowed by section 4943(c)(2)(C) of the Code. X has made no additional donations of stock to you.

X is an officer and director of both you and Y. As founder and a substantial contributor to W, X was a disqualified person as regards W. Y is a publically traded corporation. X and other family members control Y.

Subsequent to W receiving the gift of stock from X, you were established. W was terminated pursuant to the provisions of section 507 and all of its assets were transferred to you. W had requested and received a ruling from the Service regarding its proposed section 507 substantial contraction and termination. The ruling from the Service specifically held, among other things, that pursuant to the provisions of section 1.507-3(a)(6) of the Foundation and Similar Excise Tax Regulations "[you] succeeded to the transferors holding periods in section 4943(c)(4), (5) and (6) for disposing of excess business holdings."

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Re:

As noted above, after the gift of stock from X, W's holdings in Y exceeded the level of permissible holdings. Section 4943(c)(6) provided W a 5-year period to dispose any excess business holdings. This period ended in the year 2000. As a result of the termination of W, you succeeded to the time remaining in the 5-year period within which the shares in Y, which W had acquired by gift, were to be disposed of.

Z is exempt under section 501(c)(3) of the Code and is a private foundation within the meaning of section 509(a). Z was established by X's son and it also holds a substantial number of shares in Y. Several years after establishing Z, X's son made an additional contribution of shares of stock in Y to Z. X's son is a director of Z and an officer of Y.

The information you have submitted indicates that both you and W were actively disposing of shares of stock in Y, both by sale and by donating blocks of shares to various public charities. However, the orderly disposal of the shares was disrupted and the number of shares being distributed was substantially reduced when it appeared that a unrelated third party was purchasing shares in Y in an attempt to takeover control of Y. This lull continued until X could take the necessary actions to ensure the family's continued control of Y. Furthermore, because of the small number of shares in Y which are traded on the stock market, you fear that the sale of a block of stock of the size needed to come within the permitted holdings levels of section 4943 would greatly depress the value of the stock. Accordingly, by the end of the five year period you had been unable to dispose of a sufficient number of the shares of stock you held in Y. Therefore, your holdings in Y, including the shares held by Z exceeded the level of permitted holdings.

As mentioned above, you have requested an extension of the five year period within which a private foundation is expected to dispose of any excess business holdings it has received by gift. Prior to the end of the initial five year period, you submitted a plan which would have enabled you to dispose of all the additional shares of stock you need to dispose of in order to come within the 2 percent de minimis holdings level. You have represented that a copy of this plan has been submitted to the appropriate state official having administrative or supervisory authority or responsibility with respect to your disposition of the remaining shares of stock. As a result of subsequent discussions with representatives of our office you have modified your proposed plan and now expect to dispose of your excess business holdings within one year from the date upon which the initial five year period ended. You have indicated that to the extent you are unable to distribute all your excess holdings to qualified recipients the remaining shares shall be sold through the stock market.

Section 501(c)(3) of the Code exempts from Federal income tax organizations organized and operated exclusively for charitable or educational purposes.

Section 509(a) of the Code provides that, unless specifically excepted, a domestic or foreign organization described in section 501(c)(3) is a private foundation and subject to the excise taxes of Chapter 42.

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

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Re:

Section 4943(c)(l) of the Code defines the term excess business holdings as meaning 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)(A) of the Code provides that the permitted holdings of any private foundation in an incorporated business enterprise are:

(i) 20 percent of the voting stock, reduced by

(ii) the percentage of the voting stock owned by all disqualified persons.

Section 4943(c)(2)(C) provides that a private foundation shall not be treated as having excess business holdings in any corporation in which it (together with all other private foundations which are described in section 4946(a)(l)(H)) owns not more than 2 percent of the voting stock and not more than 2 percent in value of all outstanding shares of all classes of stock.

Section 4943(c)(6)(A) of the Code provides that, with certain exceptions not applicable here, if after May 26, l969, there is a change in the holdings in a business enterprise (other than by purchase, i.e. by gift or bequest) 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 5-year period beginning on the date of such change in holdings.

Section 4943(c)(7) provides that the Secretary may extend for an additional 5 year period the period under subparagraph (6) for disposing of excess business holdings 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) diligent effort 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 initial 5-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 foundations submits the plan described in clause (i) 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 from the Attorney General (or other appropriate State official) to such plan during such 5-year period, and

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Re:

(C) the Secretary determines that such plan can reasonably be expected to be carried out before the close of the extension period.

Section 53.4943-4(d)(4)(A) of the Foundation and Similar Excise Tax Regulations provides that in general, when the percentage of the holdings in a business enterprise held by a private foundation and all disqualified persons together or when the percentage of the holdings of a private foundation alone in such business enterprise deceases such holdings may not be increased.

Section 53.4943-3(b)(4)(i) of the regulations provide that a private foundation is not treated as having excess business holdings in any incorporated business enterprise in which it (together with all other private foundations described in section 4946(a)(l)(H) actually or constructively owns not more than 2 percent of the voting stock and not more than 2 percent in value of all outstanding shares of all classes of stock. If, however, the private foundation, together with all other private foundations described in section 4946(a)(l)(H) actually or constructively owns more than 2 percent of either the voting stock or the value of the outstanding shares of all classes of stock in any incorporated business enterprise, all the stock in such business enterprise classified as excess business holdings under section 4943 is treated as excess business holdings. For purposes of this paragraph, any stock owned by a private foundation which is treated as held by a disqualified person under section 4943(c)(4)(B), (5) or (6) shall be treated as actually owned by the private foundation.

Section 4946(a)(l)(H) provides that for the purposes of section 4943 the term disqualified person includes a private foundation which is effectively controlled (directly or indirectly) by the same person or persons who control the private foundation in question, or one where substantially all of the contributions were made (directly or indirectly) by the same persons to include a substantial contributor or a member of their family.

The information submitted establishes that X gave you a large number of shares of stock in Y and under the provisions of section 4943(c)(6)(A) you were required to dispose of these shares of stock within 5 years in order to avoid being placed in a position of having excess business holdings. You were unable to dispose of an adequate number of shares of stock within the allotted five year period. Accordingly, you requested an additional period of time within which to dispose of these shares. You have presented a plan to dispose of your excess business holdings in Y within one year from the end of the initial 5 year period. It appears that this plan can reasonably be expected to be successfully carried out and at the end of the one year extension period you expect to have disposed of sufficient shares of stock in Y to come within the 2 percent de minimis holdings level.

Accordingly, based on the information you have submitted we rule that your plan to dispose of your excess business holdings can reasonably be expected to be carried out before the close of the year after the expiration of the initial five year period within which you are required to dispose of your excess business holdings obtained by gift.

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

Because this letter could help resolve any questions about your exempt status, you should keep it in your permanent records.

200040037

Re:

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,

Garland A. Carter

Garland A. Carter
Manager, Exempt Organizations
Technical Group 2

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