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TAX EXEMPT AND GOVERNMENT ENTITIES DIVISION

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

Uniform Issue List
4943.00-00
4943.04-00

Date:

MAR 14 2003

Contact Person:

Identification Number:

Contact Number:

Employer Identification Number:

Legend:

B =
M =
N =
O =

x =

Dear Sir or Madam:

We have considered the ruling request dated December 23, 2002, submitted on behalf of M, wherein it requested, pursuant to section 4943(c)(7) of the Internal Revenue Code, an extension of the 5-year period to dispose of certain excess business holdings acquired by gift or donation.

FACTS:

M has been recognized by the Internal Revenue Service as exempt from federal income tax under section 501(c)(3) of the Code. The Service has also classified M as a private foundation within the meaning of section 509(a) of the Code.

In 1996 and 1997, B made contributions of stock in N to M. N is a publicly traded security listed on the NASDAQ exchange. B owns more than 50% of the total outstanding stock in N and is also a disqualified person under section 4946(a) by virtue of his contribution of more than 2% of the total support of M in those years.

Exhibit A of your submission shows that B contributed 25x shares to M in 1996 and slightly over 210x shares to M in 1997. In the four succeeding years, M made the following distributions of this donated stock: 1998: 13.8x; 1999: 26x; 2000: 11x; and 2001: 15.5x. The total remaining donated stock at the close of 2001 was approximately 169x, valued at approximately $1,438x.

Pursuant to our request, your authorized representative later submitted data re the total shares outstanding of N and the amount of stock owned by B and M. The total shares owned

by B include shares held in the name of his former spouse as well as shares held in the name of the B Revocable Living Trust of which B is a trustee. This information covered the years 1996 through 2001 (six years altogether). However, "Information related to outstanding shares and shares owned by B was obtained from published filings with the Securities and Exchange Commission, including annual Forms 10K as well as annual proxy statements (Forms DEF-14A). These filings report share ownership as of the filing dates, and are not reported based upon a calendar year." Thus, for the years 1996 through 2000, the data provided is as of specified dates in March of the following year, e.g., for 1996, the reporting date is March 27, 1997. For 2001, the data reported is as of February 28, 2002.

Our examination of the table provided in this recent submission shows that the total outstanding shares of N varied from a high of approximately 46,299x for 1998 (as of March 24, 1999) to a low of approximately 42,320x for 2000 (as of March 16, 2001). The shares owned by B varied from a high of approximately 24,935x for 1996 (as of March 27, 1997) to a low of approximately 23,937x for both the years 2000 and 2001 (data as of March 16, 2001 and February 28, 2002, respectively). With rounding, B's percentage of ownership of shares in N varied from a high of 57% for year 2000 to a low of 52% for the years 1997 and 1998.

You inform us that in the years subsequent to the years (1996 and 1997) in which the stock was donated to M, the share prices have fluctuated widely, and the stock has been very susceptible to price changes caused by dispositions of shares by unrelated shareholders.

In an attempt to dispose of the shares which were donated and subject to the provisions of Code section 4943, M undertook a systematic process to distribute the shares to charities in an attempt to dispose of the shares over an extended period of time without adversely impacting the value of the securities. These distributions are reflected in the aforementioned Exhibit A.

During 1998 and 1999, the market value of the shares declined dramatically and M's ability to dispose of the shares without a substantial adverse impact upon share price.

For the above reasons, M requests an additional 5-year extension of time to dispose of the shares donated subject to the excess business holdings provisions of Code section 4943(c)(7).

M undertook a disposition of the donated shares beginning with one year after the donation and has systematically and consistently continued in each following year. The smaller gift received in 1996 was disposed of by M well in advance of the closing of the 5-year period, but the larger gift received in 1997 was too large to be so disposed, as explained below.

During the 5-year period, the stock price of N decreased substantially and prices remained depressed until mid-2001. These low prices, combined with the volatility of the stock, made it impossible to dispose of the stock prior to the end of the 5-year period without substantially sacrificing M's primary charitable assets. A sale of the assets by M would have adversely impacted on the stock price and consequently would have caused M to earn less than fair market value for the shares.

M has planned a disposition of the shares which will result in their full disposition within the 5-year extension period. In each year 2003 to 2007, M will distribute between 15x and 25x shares to public charities in the furtherance of its exempt purposes. M will also attempt to sell its securities during periods of time in which the price of the shares represents a reasonable value for them. M will dispose of the shares in smaller lots in an attempt to avoid any adverse impact on stock prices in the markets. Those sales will occur annually in amounts anticipated to equal between 6x and 16x shares. At the end of the 5-year period, M will have disposed of all of its shares of N stock.

In accordance with the requirements of Code section 4943(c)(7), a copy of the above plan has been filed with the Attorney General of O to obtain comment. You represent that this filing occurred simultaneously with the filing of this ruling request with the Service.

LAW:

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.

Section 4943(c)(1) of the Code defines the term "excess business holdings" to mean, 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 any 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 4946(a)(1)(H) of the Code provides that for 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 person or persons described in subparagraph (A), (B), (C), or members of their families, who made (directly or indirectly) substantially all of the contributions to the private foundation in question.

Section 4943(c)(6)(A) of the Code provides that, with certain exceptions not applicable here, if, after May 26, 1969, 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 53.4943-6(a)(1) of the Foundation and Similar Excise Taxes Regulations provides that paragraph (6) of section 4943(c) prescribes transition rules for a private foundation, which, but for such paragraph, would have excess business holdings in a business

enterprise after May 26, 1969 (other than by purchase by such foundation or by a disqualified person) to the extent that section 4943(c)(5) (relating to certain holdings acquired under a pre-May 26, 1969, will or trust) does not apply.

In the case of a private foundation which has no excess business holdings immediately prior to the gratuitous receipt in question (determined without regard to sections 4943(c)(4),(5), or (6) of the Code), section 4943(c)(6)(A) applies, and the entire interest of the foundation in the enterprise in question is treated as held by a disqualified person throughout the 5-year period beginning on the date of change in the holdings. Section 4943(c)(6) and section 53.4943-(6)(a)(1) of the regulations are applicable to M as a result of B's gift of common stock to M. Accordingly, B is treated as the holder of the 25x shares of N stock throughout the initial 5-year period ending on December 31, 2001, and B is also treated as the owner of the 210x shares of N stock for the 5-year period ending on December 31, 2002.

Section 4943(c)(7) of the Code was added by section 307(a) of the Tax Reform Act of 1984, P.L. 98-369. It applies to business holdings with respect to which the five-year period under section 4943(c)(6) ends on or after November 1, 1983. The purpose of section 4943(c)(7) is to give the Secretary discretion to extend the five-year period of section 4943(c)(6) for disposing of post-May 26, 1969, gratuitous acquisitions of holdings in a business enterprise. The Secretary's authority is exercisable "in the case of an unusually large gift or bequest of diverse holdings or holdings with complex corporate structures" if the following requirements are met:

(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 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 foundation 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

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

ANALYSIS

M has submitted information which shows that B gave a large number of shares of stock in N to M in 1996 and 1997. Pursuant to the provisions of section 4943(c)(6)(a) of the Code, M was required to dispose of these shares of N stock within 5 years in order to avoid being placed in a position of having excess business holdings. After diligent efforts, M was able to dispose of approximately 66x stock, out of a total of 235x donated to it in 1996 and 1997, in the 4 year period running from 1998 to 2001. We do not have the data for year 2002 inasmuch as the ruling request was submitted prior to December 31, 2002, which is the end of M's taxable year. M requests an additional 5 years within which to dispose of the remaining shares. M has presented a plan whereby it will dispose of all of the stock in N received from B in 1996 and 1997 within the additional 5-year period running from 2003 to 2007. This plan involves both distributions to charities and selected sales of the stock designed to maintain its value on the markets. The successful implementation of this plan will enable M to divest itself of all excess business holdings in N and thereby comply with the provisions of Code section 4943(c)(2)(C) and section 53.4943-3(b)(4)(i) of the regulations. And, as required under section 4943(c)(7), M has submitted its plan to dispose of its excess business holdings to the Attorney General of O.

RULING

Based on the application of the facts and representations outlined above to the relevant law, we conclude that M will satisfy the provisions of section 4943(c)(7) of the Code. As such, we rule that M may have a five (5) year extension, to December 31, 2007, in order to dispose of its excess business holdings in N.

This ruling is based on the understanding that there will be no material changes in the facts upon which it is based. Any changes that may have a bearing upon M's exempt status should be reported to the Ohio Tax Exempt and Government Entities (TE/GE) Customer Service Office. The mailing address is: Internal Revenue Service, TE/GE Customer Service, P.O. Box 2508, Cincinnati, OH 45201. The telephone number there is 877-829-5500 (a toll free number).

Pursuant to a Power of Attorney on file in this office, we are sending a copy of this letter to your authorized representatives.

We are also sending a copy of this ruling to the Ohio TE/GE Customer Service Office. Because this letter could help resolve any questions about M's tax status, it should be kept with M's permanent records.

If there are any questions about this ruling, please contact the person whose name and telephone number are shown in the heading of this letter.

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.

Thank you for your cooperation.

Sincerely,

Gerald V. Sack

Gerald V. Sack
Manager, Exempt Organizations
Technical Group 4