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Internal Revenue Service

Department of the Treasury

4943.04-00
4943.03-04

Washington, DC 20224

Contact Person:

Telephone Number:

In Reference to: OP:E:EO:T:2

Date: MAR 18 1999

EIN:
DO:

LEGEND:
M =
N =
O =

Dear Sir or Madam:

This is in reply to your request for a ruling under section 4943(c)(7) of the Internal Revenue Code for a five year extension of the period within which you are normally allowed to dispose of certain excess business assets acquired by gift or bequest. Your ruling request was filed prior to the close of the five year period within which a private foundation is required by section 4943(c)(6) of the Code to dispose of such holdings.

You have been recognized as exempt from Federal income tax under section 501(c)(3) of the Code and are a private foundation within the meaning of section 509(a).

You were established by the directors of M. Several years ago the widow of one of M's co-founders died and you received additional shares of stock in M through her will. As a result of this bequest your holdings in M increased to less than 10 percent. Prior to receiving this bequest you believed you were complying with the 2 percent de minimis holding rule set forth in section 4943(c)((2)(C) of the Code. However, the information you submitted indicates that the extent of your holdings in M has exceeded the two percent de minimis holdings exception, without the additional shares you received by bequest. The information provided indicates that since you received the bequest, M has redeemed shares of stock on several occasions. In spite of these stock redemptions your holdings in M and later in N, has not decreased.

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During the same time period when you received the bequest, disagreements developed between key parties in M. M's directors attempted to sell the entire company. Negotiating the sale of the company was complicated by the fact that M operated two distinct businesses and management and accounting for the two divisions was not accounted for separately. Negotiations were further complicated because one of the two lines of business (which ultimately became N) had become unprofitable. You have represented that after several failed attempts, M was eventually able to enter into an agreement with O to purchase the profitable side of the business which kept the name, M. The nonprofitable line of business, N, was established as an independent company. M was then merged with O. The sale to O occurred within the 5 year permitted holding period for stock received by bequest.

A new management team for N was brought together and new plans were developed in an attempt to make N profitable again. Although the new team is now running the company, N continues to be in need of significant improvements. You represent that because of the changes already made the value of the company reasonably is expected to increase. However, by the time the changes were in place, the 5-year extended permitted holding period had almost expired and as of the date of this letter the period has expired.

You have represented that your trustees have considered the option of contributing the stock to another charity. However, you concluded that this would be a disservice to the recipient because the stock is expected to remain unmarketable for the foreseeable future.

Therefore, you have requested a five-year extension of time within which to dispose of the shares you currently have in N. Your request for an extension was filed with the Service prior to the end of the 5-year extended permitted holding period. You have represented that currently the stock could only be sold for a price that is less than fair market value. In addition, as required section 4943(c)(7)(b)(ii) of the Code, the plan to reduce your excess business holdings has been submitted to the proper state authority and that office had no objections to it.

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.

Re:

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 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)(1)(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, 1969, there is a change in the holdings in a business enterprise (other than by purchase 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 an d 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.

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.

You indicate that you received additional shares in M, by bequest, more than 5 years ago. Prior to this bequest you held slightly more than 2 percent of the outstanding shares in M and the bequest raised your holdings to less than 10 percent. You were able to divest of a portion of the underlying assets of M during the 5 year period after you received the additional shares in M. However, your stock holdings in M and what became N changed minimally. The information you submitted indicates that the company is currently unprofitable and that you have been unable or unwilling to divest yourself of your holdings because you believe that you cannot get fair market value for the shares you hold. However, you have also indicated that the company is recovering and you expect the value of your holdings to increase. You have considered other ways to dispose of your excess business holdings but have rejected them. In addition, it appears that prior to receiving the bequest your stock holdings have exceeded the permitted 2 percent de minimis holdings exception set forth in section 4943(c)(2)(C) of the Code. Furthermore, there have been several stock redemptions between the date upon which you received the bequest and the date you requested this ruling.

Re:

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. However, in addition to properly filing a request with the Service and the proper state authorities, for the Service to grant such an extension a private foundation must show that it has made diligent efforts to dispose of such holdings, and that disposition of the shares of stock within this period has not been possible except at a price substantially below fair market value.

Based upon the information available we have concluded that we cannot grant your request to extend the time during which you have to dispose of your excess business holdings. It appears that you had excess business holdings during all or a portion of the period prior to receiving this bequest. The bequest was not an unusually large gift and the amount of your excess business holdings are not exceptionally large. You have had opportunities to reduce your holdings during several stock redemptions and you have indicated that other avenues to divest yourself of your excess business holdings were and still are available.

Accordingly, your request for additional time under section 4943(c)(7) of the Code to dispose of your excess business holdings in N is hereby denied.

If you have any questions, please contact the person whose name and telephone number appear at the heading of this letter. For other matters, including questions concerning reporting requirements, please contact your key District Director.

We are informing your key District Director of this ruling. Because this letter could help resolve any question about your exempt status, you should keep it in your permanent records.

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

Sincerely Yours,

(Signed) Garland A. Carter

Garland A. Carter
Chief, Exempt Organizations
Technical Branch 2