Bond Case Briefs

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IRS LTR: Foundation Granted More Time to Dispose of Stock.

The IRS granted a private foundation an additional five years to dispose of excess holdings of corporate stock after concluding the foundation made diligent efforts to dispose of the shares but was unable to do so except at a price substantially below the fair market value.

Employer Identification Number: * * *

LEGEND:

Corporation = * * *

Founder = * * *

Brand = * * *

Date 1 = * * *

Date 2 = * * *

Dear * * *:

This is in response to your ruling request dated November 28, 2012, requesting an extension for an additional five years under I.R.C. § 4943(c)(7) for disposing of certain excess business holdings.

FACTS

You are a private foundation organized as a nonprofit corporation to further the charitable interests of your Founder. You have been recognized as an organization exempt under § 501(c)(3) and are classified as a private foundation within the meaning of § 509(a). You state that you operate exclusively for charitable and educational purposes through the making of grants and contributions to charities. You acquired * * * percent of Corporation stock as a donation from your Founder after his death. You have excess business holdings in Corporation under § 4943(c)(1). Your initial five-year period for disposing of these excess business holdings will end on Date 1.

During the initial five-year period for disposing of excess business holdings under § 4943(c)(6), you have created a more formal management and governance structure for Corporation, and taken steps to unify the Brand with respect to * * *. Your managers have consulted with advisors, valuation specialist and legal counsel to discuss the various disposition options available to you.

You represent that, because of the size, value, nature, and complexity of this business holding, you have, despite your best efforts, been unable to complete the sale of Corporation stock within the prescribed five-year period except at a price substantially below fair market value. You represent that you will be better able to determine and realize the full fair market value of your interest in Corporation after the expiration of the initial five-year period.

Your directors have established a plan of disposition that includes either selling your Corporation stock to an unaffiliated third party or donating Corporation shares to one or more charitable organizations. Your directors expect that they can dispose of the Corporation stock no later than Date 2. You submitted the plan to your appropriate state Attorney General and are waiting for a response. If and when a response is received from the Attorney General, a copy will be submitted to the Secretary in accordance with § 4943(c)(7)(B)(ii).

Prior to the end of the initial five-year period for disposing of excess business holdings under § 4943(c)(6), you submitted a request to the Internal Revenue Service for an extension of five years to complete the required disposition.

RULING REQUESTED

You requested a ruling extending the five-year period of time for disposing of excess business holdings for an additional five years under § 4943(c)(7).

LAW

I.R.C § 4943(a)(1) imposes excise taxes on the excess business holdings of any private foundation in a business enterprise.

I.R.C. § 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 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.

I.R.C. § 4943(c)(2) provides in part 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.

I.R.C. § 4943(c)(6)(A) provides that, if 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.

I.R.C. § 4943(c)(7) provides that the Internal Revenue Service may extend for an additional five years the initial five-year period 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) 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 such size and complexity or diversity of holdings;

(B) Before the close of the initial five-year period: (i) the private foundation submits to the Internal Revenue Service 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 Internal Revenue Service any response the private foundation received during the five-year period; and

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

ANALYSIS

You are subject to § 4943, which imposes a tax on the excess business holdings of private foundations. Generally, under § 4943(c)(2)(A), a private foundation and its disqualified persons are permitted to hold twenty percent of the voting stock in a business enterprise, with any excess constituting excess business holdings. However, if a private foundation acquires holdings in a business enterprise other than by purchase (e.g., by gift) which causes the foundation to have excess business holdings, then the interest of the foundation in such business enterprise shall be treated as held by a disqualified person (rather than the foundation) for a five-year period beginning on the date such holdings were acquired by the foundation, under § 4943(c)(6)(A).

Under § 4943(c)(7), the Internal Revenue Service may extend the initial five-year period for disposing of excess business holdings for an additional five years if a foundation establishes that: (i) it made diligent efforts to dispose of such holdings during the initial five-year period, and 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 holdings, (ii) before the close of the initial five-year period it submits to the Internal Revenue Service, and 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, a plan for disposing of all of the excess business holdings involved during the extension and (iii) the Internal Revenue Service determines that such plan can reasonably be expected to be carried out before the close of the extension period.

You received a donation of * * *% of the Corporation stock from Founder, a disqualified person under § 4946. You have stated that you consequently have excess business holdings in Corporation under § 4943(c)(1). Therefore, you are required under § 4943(c)(6) to dispose of these holdings during the initial five-year period that will end on Date 1. You have established that during the initial five-year period you have made diligent efforts to dispose of the Corporation stock, but disposition within this period has not been possible (except at a price substantially below fair market value) because of the size and complexity or diversity of your holdings. Before the end of the initial five-year period, you submitted a request to the Internal Revenue Service under § 4943(c)(7) for an additional five-year period within which to dispose of your excess business holdings in Corporation and you described your plan for disposing of these holdings. You also submitted the plan to the Attorney General of your state, who is expected to approve the plan. Based on the information submitted, we have determined that your plan to dispose of your excess business holdings in Corporation within an additional five-year period can reasonably be expected to be carried out. Therefore, we conclude that you do meet the requirements under § 4943(c)(7) for an extension of five years to dispose of your excess business holdings in Corporation.

RULING

Under § 4943(c)(7), the period during which you may dispose of your excess business holdings in Corporation is extended for an additional five years, until Date 2.

We are not ruling on whether your interest in Corporation constitutes excess business holdings.

This ruling will be made available for public inspection under § 6110 after certain deletions of identifying information are made. For details, see enclosed Notice 437, Notice of Intention to Disclose. A copy of this ruling with deletions that we intend to make available for public inspection is

attached to Notice 437. If you disagree with our proposed deletions, you should follow the instructions in Notice 437.

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

This ruling is based on the facts as they were presented and on the understanding that there will be no material changes in these facts. This ruling does not address the applicability of any section of the Code or regulations to the facts submitted other than with respect to the sections described. Because it could help resolve questions concerning your federal income tax status, this ruling should be kept in your permanent records.

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.

In accordance with the Power of Attorney currently on file with the Internal Revenue Service, we are sending a copy of this letter to your authorized representative.

Sincerely,

Ronald Shoemaker

Manager, Exempt Organizations

Technical Group 2

Citations: LTR 201328034

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