



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

200407024

Date: **NOV 18 2003**

Contact Person:

Identification Number:

No SIN#:
4943.04-03

Telephone Number:

Employer Identification Number:

Legend:

Founder =
Corporation =
Holding Company =
Foreign Government =
International Regulatory Agencies =

Dear Sir or Madam:

This is in response to your ruling request for an extension of an additional five years from the end of the five year period provided under section 4943(c)(6) of the Internal Revenue Code in which to dispose of certain excess business holdings. Authority for such extension is provided under section 4943(c)(7) of the Code.

You are 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) of the Code. You have been described in section 501(c)(3) since 1981.

The information submitted indicates that you were established by Founder. Founder was your sole contributor and a substantial contributor as defined in section 507(d)(2) of the Code. Founder was your sole member and had the power to elect, appoint and remove directors at will, since the members of the Foundation elect the directors. The number of members was increased to eight in Founder's will.

Founder died in 1998 and all of the residue of Founder's estate was bequeathed to you under the terms of Founder's will. The will provides that the number of your members is to be increased to eight. You currently have four members, and these individuals are currently directors. You currently have sixteen directors.

The assets in Founder's estate included all of the stock of Corporation and its

subsidiaries. Corporation had a complex and diverse structure because it owned (directly and through its subsidiaries) various assets and businesses. Founder's intention as stated in the will was that the executors would eventually convert the businesses held by Corporation into cash and distribute the proceeds to you.

As of the day of Founder's death, Corporation owned two major businesses and interests in a variety of other assets.

The executors of Founder's estate and your directors endeavored to maximize the value of Founder's estate and thus Founder's estate has sought the advice of investment bankers, consultants and attorneys. After a careful deliberation of the options available, Holding Company was established to own, either directly or indirectly, all the businesses and assets of Corporation. Holding Company is a single member LLC and you are its owner. The executors of Founder's estate are the managers of Holding Company and are also your directors. All of the assets of Corporation were transferred to Holding Company.

Holding Company has sold many of the assets received in the bequest and is in the process of determining how to dispose of the remaining assets. You still have one active business asset that you are trying to sell, which could give you excess business holdings within the meaning of section 4943(c)(1) of the Code. This business has had declining earnings since 1999 and is heavily influenced by economic fluctuations in its industry in the United States.

You have provided documentation explaining that the industry your business operates in will continue to be in a state of flux for the next several years based upon regulatory issues with Foreign Government and the imposition of various tariffs. Foreign Government has been lobbied by businesses in its country that are affected by these issues and Foreign Government has filed appeals with International Regulatory Agencies about these tariffs. Industry specialists believe that the tariffs are needed in order to level the playing field between the United States and Foreign government. The outcome of the appeals with the International Regulatory Agencies is uncertain. Thus, until this issue is resolved, the probability of selling this business is uncertain.

Other factors that have negatively impacted the value of this business you own include the declining value of the Euro, low cost imports and exports of products produced in other countries.

Due to these circumstances, you believe that if you were forced to sell this business within the next year, the sale price would be substantially below historic fair market value. Furthermore, if others that are doing business in this industry are aware of your deadline to sell the business, then they will take advantage of the forced sale to obtain a bargain sale price.

Your directors believe that a forced sale of this business in the current market would hinder their efforts to obtain the highest value for the assets, and undermine your goal of building a sustaining and enduring endowment fund to carry on the charitable goals of your Founder. Therefore, you plan to retain this business until it can be sold at a reasonable price. Your directors plan to assess the market and sell assets whenever possible. It is anticipated

that the most effective approach will be to sell the entire business as a unit, although the directors would entertain other approaches.

You have submitted your plan to dispose of this business to the Attorney General in the state where you are located.

LAW:

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.

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)(C) of the Code 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) of the Code provides for a 5-year period to dispose of gifts and bequests, 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 purpose by the private foundation or by a disqualified person) which causes the private foundation to have excess business holdings in such enterprise.

Section 4943(c)(7) of the Code 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 efforts to dispose of such holdings have been made within the initial 5-year period.

(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 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

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

Section 53.4943-6(b)(1) of the Foundation and Similar Excise Taxes Regulations provides that in the case of an acquisition of holdings in a business enterprise by a private foundation pursuant to the terms of a will or trust, the five-year period described in section 4943(c)(6) of the Code and in this section shall not commence until the date on which the distribution of such holdings from the estate or trust to the foundation occurs.

Rationale

A private foundation is subject to the excise tax described in section 4943 of the Code if it has excessive business holdings in a business enterprise. Section 4943(c)(6) allows a private foundation five years to dispose of its excess business from the time a change in the holdings in a business enterprise causes the private foundation to have excess business holdings in that enterprise.

In some situations, if a private foundation receives an unusually large gift or bequest of diverse business holdings or holdings with complex corporate structures, then the private foundation may receive an additional five year extension to dispose of the excess business holdings in the business enterprise if the conditions of section 4943(c)(7) are satisfied.

You submitted information which shows that you received a bequest of 100% of the stock of various complex business interests of Corporation on January 14, 1999. Prior to the January 14, 1999 you had no excess business holdings and now you would be considered to have excess business holdings in a business enterprise as defined in section 4943(c)(1) of the Code and have until January 14, 2004 to dispose of any excess business holdings as defined in section 4943(c)(6).

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You have provided information showing that the bequest was an unusually large bequest of diverse business products. You have represented that you have engaged in diligent efforts to dispose of your excess business holdings during the initial 5-year period and were unable to do so by reason of the complexity of the industry of the business because of regulatory issues. You have provided a timely plan for disposing of all your excess business holdings if the period of time to dispose of these assets is extended, and have submitted this plan to the Attorney General in the state that you are located.

Based on the information submitted we rule that as provided in section 4943(c)(7) of the Code, you are granted a five-year extension of time to January 13, 2009 to dispose of your excess business holdings.

This ruling is based on the understanding that there will be no material change in the facts upon which it is based. Any changes that may have a bearing on your tax status should be reported to the Service. 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.

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.

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,

Marvin Friedlander
Manager, EO Technical
Group 1