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

Date: JUL 12 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 May 31, 2000, regarding a request by W for an 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). The majority of the assets you hold are shares of stock in Y, a publicly traded company, which Z has contributed to you.

X, Z's mother, established W, a private foundation, which was also funded with stock in Y. In 1995 X contributed a large number 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. Pursuant to the provisions of section 4943(c)(6) of the Code, W had a 5 year period from the date of the gift to dispose of the shares of stock it held which were considered excess business holdings. Furthermore, pursuant to the provisions of section 53.4943-3(b)(4)(i) of the Foundation and Similar Excise Tax Regulations, your holdings in Y are included in determining whether W has excess business holdings because you are considered a disqualified person for the purposes of section 4943 and the 2 percent de minimis rule. The initial holding period ended in the year 2000, however W had not successfully reduced its holdings to a permitted level. Therefore, pursuant to the provisions of section 4943(c)(7), W requested an extension of the 5 year period.

In your letter of May 3, 2000, you have acknowledged that you are aware that W has not disposed of a sufficient number of shares of stock to enable it and all related private foundations to come within a level of permitted holdings. In addition, you are aware of W's current plan to dispose of its excess business holdings and have agreed to the terms of this plan.

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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)(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.

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

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Re:

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.

You recognized you have an interest in W's request for an extension because section 53.4943-3(b)(4)(i) of the regulations provides that your holdings in Y are taken into consideration in determining whether W comes within the 2 percent de minimis holdings rule and similarly W's holdings are considered in determining your level of permitted holdings.

We have considered the plan presented by W to dispose of its excess business holdings in Y within one year from the end of the initial 5 year period and have concluded that W can reasonably be expected to have successfully disposed of sufficient shares of stock in Y to come within the 2 percent de minimis holdings level. Accordingly, W has been granted an extension of one year within which to dispose of the remaining shares of stock needed to permit both you and W to come within the 2 percent de minimis permitted holdings level. Failure to dispose of sufficient shares of stock in Y will place you and W in excess business holdings situations and subject to the tax imposed by section 4943(a) of the Code.

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.

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,
(signed) Garland A. Carter

Garland A. Carter
Manager, Exempt Organizations
Technical Group 2