

Internal Revenue Service

Number: **200132023**
Release Date: 8/10/2001
Index Nos: 9100.00-00, 565.01-02 and
541.00-00

Department of the Treasury

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CC:ITA:1 PLR-103369-01

Date:
May 11, 2001

Taxpayer =
Parent-Corp =
State X =
S-Firm =
P =
X =
Y =
Date1 =
Year1 =
Year2 =
Year3 =
Year4 =
\$a = \$

FEIN:

Dear :

This responds to your letter of December 29, 2000, requesting an extension of time, under §§ 301.9100-1 and -3 of the Procedure and Administration Regulations, for Taxpayer to make consent dividend elections pursuant to § 565 of the Internal Revenue Code.

Taxpayer is a member of a consolidated tax return group with Parent-Corp, the common parent corporation. All corporations are accrual method taxpayers filing a consolidated tax return using a fiscal year end of Date1. Taxpayer is a State X corporation. Taxpayer was incorporated on .

Taxpayer was incorporated by Parent-Corp to facilitate group financing. Taxpayer borrows funds from certain group members and then loans such funds to other members that need additional working capital. Taxpayer collects interest on

intercompany loans and pays interest on funds which other Parent-Corp companies have loaned to Taxpayer.

Parent-Corp's corporate finance department had determined that Taxpayer was a personal holding company and determined that only tax years ended Date1, Year2, Year3, and Year4 had undistributed personal holding company income. Based on this advice a request for 9100 relief to make a consent dividend election for these years was filed on .

On , the Service granted relief by issuing PLR 101800-00 for Taxpayer's tax years ended Date1, Year2, Year3, and Year4. In preparing the Forms 972 and 973 filed on , for the Year2 through Year4 tax years, S-Firm was asked to determine what impact, if any, the charitable contribution carryover had on the computation of the undistributed personal holding company income on the Date1, Year1 tax return. S-Firm then advised Taxpayer that § 545(b)(2) prohibits the deduction of charitable contribution carryovers for the purpose of calculating undistributed personal holding company income. Prior to this time, Taxpayer was unaware that § 545(b)(2) prohibited the deduction of charitable contribution carryovers for the purpose of calculating undistributed personal holding company income. Prohibition of this carryover deduction resulted in undistributed personal holding company income for the taxable year ending Date1, Year1 for Taxpayer. However, this undistributed holding income would have qualified for a consent dividend election by the parent.

Thus, Taxpayer requests the Commissioner's consent to extend the due date to make a consent dividend election under § 565, on Forms 972 and 973, in the amount of approximately \$a for the taxable year ended Date1, Year1.

The failure to make the consent dividend election was due to the oversight of P who prepared the consolidated federal income tax returns of Parent-Corp and subsidiaries. Individuals X, and Y, of P acknowledge this error by sworn affidavits.

Section 301.9100-3 of the regulations generally provides extensions of time for making regulatory elections. For this purpose, § 301.9100-1(b) defines the term "regulatory election" to include an election whose deadline is prescribed by a revenue ruling, revenue procedure, notice or announcement published in the Internal Revenue Bulletin.

Section 301.9100-3(a) provides, in part, that requests for relief will be granted when the taxpayer provides evidence (including affidavits described in paragraph (e) of this section) to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the government.

Section 301.9100-3(b)(1) provides, in part, that except as otherwise provided (in paragraphs (b)(3)(i) through (iii) of that section), a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer (i) requests relief under this section before failure to make the regulatory election is discovered by the IRS; or (v) reasonably relied on a qualified tax professional and the tax professional failed to make, or advise the taxpayer to make the election.

The affidavits presented show that Taxpayer acted reasonably and in good faith, having relied on P to prepare its returns during the tax year at issue. Hindsight may now indicate that the professionals in P may not have had the expertise necessary to adequately advise Taxpayer with respect to consent dividend elections. However, no evidence indicates that such reliance was unreasonable.

Section 301.9100-3(b)(3) provides, in part, that a taxpayer is deemed to have not acted reasonably and in good faith if the taxpayer (i) seeks to alter a return position for which an accuracy-related penalty has been or could be imposed under § 6662 at the time the taxpayer requests relief (taking into account § 1.6664-2(c)(3) of this chapter) and the new position requires or permits a regulatory election for which relief is requested; (ii) was informed in all material respects of the required election and related tax consequences, but chose not to file the election; or (iii) uses hindsight in requesting relief. In connection with hindsight, if specific facts have changed since the due date for making the election that make the election advantageous to the taxpayer, the Service will not ordinarily grant relief. In such a case, the Service will grant relief only when the taxpayer provides strong proof that the taxpayer's decision to seek relief did not involve hindsight.

In the present case, Taxpayer is not attempting to alter a return position taken for which a penalty has been or could be imposed under § 6662. Further, Taxpayer was not informed of the need to make the election under § 565 of the Code, and so did not make any conscious choice as to whether or not to make the election. In addition, there is no indication that Taxpayer is using hindsight, as defined above, in requesting this relief. This request for relief was made within a month after the failure to make the election was discovered. Specific facts have not changed since the due date for making the election that make the election more advantageous to Taxpayer.

Section 301.9100-3(c)(1)(i) provides, in part, that the interests of the government are prejudiced if granting relief would result in the taxpayer having a lower tax liability in the aggregate for all taxable years affected by the election than the taxpayer would have had if the election had been timely made (taking into account the time value of money). Section 301.9100-3(c)(1)(ii) provides, in part, that the interests of the government are ordinarily prejudiced if the taxable year in which the regulatory election should have been made, or any taxable years that would have been affected by the election had it been timely made are closed by the period of limitations on assessment.

In the present case, granting the relief requested will not prejudice the interests of the government under the given criteria. Taken together, the disclosed circumstances indicate that the omission Taxpayer now seeks to correct originated from an honest mistake on the part of its tax advisors, and not from a desire to avoid taxes. Granting this application will not prejudice the interests of the government.

Accordingly, the consent of the Commissioner is hereby granted for an extension of time to file the forms necessary to make the § 565 consent dividend election for the year at issue for the Taxpayer as requested. This extension shall be for a period of 45 days from the date of this ruling. Please attach a copy of this ruling to the returns, schedules and forms filed in connection with making the election under § 565 when such forms are filed.

No opinion is expressed as to the application of any other provision of the Code or the regulations which may be applicable under these facts. This office makes no determination of the Taxpayer's status as a PHC and relies on the determination of status as represented in Taxpayer's application for relief. This ruling is directed only to the Taxpayer who requested it. Section 6110(j)(3) of the Code provides that a private letter ruling may not be used or cited as precedent.

Sincerely yours,
HEATHER C. MALOY
Associate Chief Counsel
(Income Tax & Accounting)
By: Thomas D. Moffitt
Acting Branch Chief
Branch 1

cc: