

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

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Date:
March 3, 2003

Taxpayer =

Parent =

Tax Director 1 =

Tax Director 2 =

A =

Accounting Firm =

Date A =

Date B =

Date C =

Date D =

Date E =

a =

b =

Dear :

This is in response to your letter dated August 8, 2002, and subsequent correspondence, 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 wholly owned by Parent. Taxpayer and Parent are accrual basis taxpayers that join in the filing of a consolidated income tax return on a calendar year basis. For the years at issue, a individuals owned more than b percent of the stock of Parent.

Taxpayer was incorporated by Parent as a holding company for managing and investing the proceeds of the initial public offering of Parent. Parent provides information systems for patient care for hospitals, group practices, academic medical centers, and delivery networks.

Taxpayer represents that it relied on the expertise of its tax director, Tax Director 1, in the preparation and review of its annual corporate income tax returns. Tax Director 1 at no time during the preparation of Taxpayer's federal income tax returns, or in any other discussions with Taxpayer or Parent, apprised either Taxpayer or Parent of the availability of the consent dividend election under § 565. In Date A, Tax Director 1 was terminated. In Date B, Tax Director 2 was hired and in Date C determined that Taxpayer was a personal holding company (a "PHC") for the taxable year ending Date D. As a result of such determination, Taxpayer sought assistance from Accounting Firm.

After Taxpayer and Accounting Firm reviewed Taxpayer's PHC status, it was determined that Taxpayer was a PHC for the taxable years ending Date D and Date E. Taxpayer represents that for the taxable years ending Date D and Date E, neither Taxpayer nor Parent had knowledge of nor did they consider PHC status, and therefore, did not attach Forms 972 and 973 to its originally filed tax returns. Taxpayer also represents that had it or Parent been apprised of Taxpayer's liability for PHC tax and Taxpayer's ability to make consent dividends, Taxpayer and Parent would have filed Forms 972 and 973, respectively. If Forms 972 and 973 had been timely and properly filed: (i) Taxpayer represents that it would not have been classified as a PHC, and (ii) Parent would not have been subject to tax on the deemed dividend for the taxable years ending Date E and Date E, due to the 100-percent dividends received deduction allowed for distributions from wholly-owned subsidiaries.

The failure to make the consent dividend election was due to the oversight of Tax Director 1 who taxpayer relied on to prepare and review its annual corporate income tax returns. Individual A, the Senior Vice President and Treasurer of Taxpayer and Parent, has stated in an affidavit that taxpayer relied on Tax Director 1, a Certified Public Accountant, who did not identify taxpayer as a PHC, nor notify Individual A of the availability of the consent dividends election and the requirement of filing Forms 972 and 973.

The Taxpayer requests the Commissioner's consent to extend the due date to

make a consent dividend election under § 565, on Forms 972 and 973, for the taxable years ending Date D and Date E.

Sections 301.9100-1 through 301.9100-3 of the Procedure and Administration Regulations provide the standards the Commissioner uses to determine whether to grant an extension of time to make a regulatory election. Section 301.9100-2 provides automatic extensions of time for making certain elections. Section 301.9100-3 provides, in part, for extensions of time for making regulatory elections that do not meet the requirements of section 301.9100-2. For this purpose, section 301.9100-1(b) defines the term “regulatory election” as an election where the due date is prescribed by a regulation published in the Federal Register, or a revenue ruling, revenue procedure, notice or announcement published in the Internal Revenue Bulletin.

Section 301.9100-1(c) of the Regulations provides, in part, that the Commissioner may grant a reasonable extension of time to make a regulatory election.

Section 301.9100-3(a) of the Regulations provides, in part, that requests for relief will be granted when the taxpayer provides evidence (including affidavits described above) 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) of the Regulations provides that a taxpayer will be deemed to have acted reasonably and in good faith if the taxpayer –

- (i) requests relief before the failure to make the regulatory election is discovered by the Service;
- (ii) inadvertently failed to make the election because of intervening events beyond the taxpayer’s control;
- (iii) failed to make the election because, after exercising due diligence, the taxpayer was unaware of the necessity for the election;
- (iv) reasonably relied on the written advice of the Service; 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 Tax Director 1 to prepare its returns for the tax years at issue.

Section 301.9100-3(b)(3) of the regulations provides that a taxpayer will not be considered to have acted reasonably and in good faith if the taxpayer

- (i) seeks to alter a return position for which an accuracy-related penalty could be imposed under section 6662 at the time the taxpayer requests relief and the new position requires a regulatory election for which relief is requested;
- (ii) was fully informed 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 original due date for making the election that make the election advantageous to a taxpayer, the Service will not ordinarily grant relief.

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. Taxpayer was not informed of the need to make the election under § 565, and so did not make any conscious choice as to whether or not to make the election. In addition, there is no indication that the taxpayer is using hindsight, as defined above, in requesting this relief.

Section 301.9100-3(c)(1) of the Regulations provides that the Commissioner will grant a reasonable extension of time only when the interests of the Government will not be prejudiced by the granting of relief. Under paragraph (c)(1)(i), the interests of the government are prejudiced if granting relief would result in a 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. Section 301.9100-3(c)(1)(ii) provides, in part, that the interests of the government are ordinarily prejudiced if the taxable years 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 circumstance indicate that the omission taxpayer now seeks to correct originated from an honest mistake on the part of its tax advisor, and not from a desire to avoid taxes. Granting this application will not prejudice the interests of the government.

Accordingly, 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 years at issue. 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.

This ruling is based upon information and representations submitted by the taxpayer and accompanied by penalty of perjury statements. While this office has not verified any of the material submitted in support of the ruling request, it is subject to

verification on examination.

No opinion is expressed about the tax treatment of any other provisions of the Code or regulations, or the tax treatment of any conditions existing at the time of, or effects resulting from, the election that is not specifically covered by the above ruling. In particular, this office makes no determination of the taxpayer's status as a PHC and relies on the determination of status as represented in the taxpayer's application for relief.

Under the power of attorney on file in this office, a copy of this letter is being sent to your authorized representative.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Sincerely yours,

LEWIS J. FERNANDEZ
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(Income Tax & Accounting)

By: ROBERT M. CASEY
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