

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:ITA:B03
PLR-144094-10

Date:
March 09, 2011

TY:

LEGEND:

- Taxpayer =
- Tier 1 Sub =
- Tier 2 Sub =
- Year 1 =
- Liquidation Date =
- Accountant's Notification Date =
- Initial Examination Date =
- Conference Date =
- Examination Closing Date =
- \$A =
- \$B =
- \$C =
- \$D =
- \$E =
- \$F =
- \$G =

Dear :

This is in response to your letter dated . In your letter, you requested an extension of time to file the forms necessary to make a consent dividend election under section 565 of the Internal Revenue Code for the tax year ending December 31, Year 1. The request is based on sections 301.9100-1 and 301.9100-3 of the Procedure and Administrative Regulations.

FACTS

Taxpayer, a corporation, is an investment firm engaged in providing services and capital to start-up companies in the money management and investment advisory community.

Taxpayer, together with Tier 1 Sub and Tier 2 Sub, filed a consolidated income tax return for federal income tax purposes for the tax year at issue. In Year 1, Taxpayer owned % of the single class of membership interest in Tier 1 Sub, a limited liability corporation. Tier 1 Sub elected to be treated as a corporation for federal tax purposes. As of the start of Year 1, Tier 1 Sub owned % of the stock of Tier 2 Sub, a corporation. Tier 2 Sub became a member of Taxpayer's affiliated group as of the start of Year 1 as a result of Tier 2 Sub's redemption of all of the shares of its stock owned by unrelated third persons during the year before Year 1. Tier 2 Sub was liquidated on the Liquidation Date during Year 1 and all of its assets transferred to Tier 1 Sub.

In Year 1, Taxpayer's undistributed personal holding company income was negative \$A and its personal holding company tax was \$B. Tier 1 Sub's undistributed personal holding company income was \$C and its personal holding company tax was \$D. Tier 2 Sub's undistributed personal holding company income was \$E and its personal holding company tax was \$F. Thus, Taxpayer's accountant determined that its consolidated undistributed personal holding company tax for Year 1 totaled \$G (including \$D from Tier 1 Sub and \$F from Tier 2 Sub) and Taxpayer paid this amount with its filed return. Taxpayer's accountant did not advise Taxpayer of the possibility of issuing consent dividends to reduce or eliminate its consolidated personal holding company tax until the Accountant's Notification Date, more than a year after the return due date for Year 1.

On or about the Accountant's Notification Date, Taxpayer's accountant began work on drafting the ruling request. Shortly thereafter, in the month of the Initial Examination Date, Taxpayer received a Notice of Examination stating that its return for Year 1 was under examination. Taxpayer's accountant represented Taxpayer in the examination proceedings. At a meeting between the Revenue Agent and Taxpayer's accountant on the Conference Date, Taxpayer's accountant notified the Revenue Agent conducting the examination of the facts regarding Taxpayer's failure to file the necessary forms to make a consent dividend.

On or about the Examination Closing Date, the examination was concluded. No penalties were imposed. The Revenue Agent also informed Taxpayer that he could not provide relief for Taxpayer's failure to make timely consent dividends as part of the resolution of the examination.

LAW AND ANALYSIS

Section 565 of the Code provides that if any person owns consent stock (as defined in section 565(f)(1)) in a corporation on the last day of the taxable year of such corporation, and such person agrees, in a consent filed with the return of such corporation in accordance with the regulations, to treat as a dividend the amount specified in such consent, the amount so specified shall, except as provided in section 565(b), constitute a consent dividend for purposes of section 561 (relating to the deduction for dividends paid). Consent stock, which is the type of stock with respect to

which consent dividends are allowed (section 565(a)), includes what is generally known as common stock and participating preferred stock, the participation rights of which are unlimited (section 1.565-6(a)(1) of the Income Tax Regulations).

Section 1.565-1(a) provides that the "dividends paid deduction," as defined in section 561, includes the consent dividends for the taxable year. A consent dividend is a hypothetical distribution (as distinguished from an actual distribution) made by certain corporations to any person who owns consent stock on the last day of the taxable year of such corporation and who agrees to treat the hypothetical distribution as an actual dividend, subject to specified limitations, by filing a consent at the time and in the manner specified in section 1.565-1(b).

Section 1.565-1(b)(3) provides that a consent may be filed no later than the due date of the corporation's income tax return for the taxable year for which the dividends paid deduction is claimed. Under Rev. Rul. 78-296, 1978-2 C.B. 183, the due date for purposes of section 1.565-1(b)(3) includes the extended due date of a return filed pursuant to an extension of time to file.

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 extensions of time for making elections that do not meet the requirements of section 301.9100-2.

Section 301.9100-1(b) defines the term "regulatory election" as an election whose due date is prescribed by a regulation published in the Federal Register, or a revenue ruling, procedure, notice or announcement published in the Internal Revenue Bulletin.

Section 301.9100-1(c) provides that the Commissioner may grant a reasonable extension of time to make a regulatory election, or a statutory election (but no more than six months except in the case of a taxpayer who is abroad) under all subtitles of the Internal Revenue Code except subtitles E, G, H and I.

Section 301.9100-3 provides extensions of time to make a regulatory election under Code sections other than those for which section 301.9100-2 expressly permits automatic extensions. Requests for extensions of time for regulatory elections will be granted when the taxpayer provides evidence (including affidavits described in the regulations) to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and granting relief will not prejudice the interests of the government.

Section 301.9100-3(b)(1) states 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) 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.

Under section 301.9100-3(b)(3), 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 has been or could be imposed under section 6662 at the time the taxpayer requests relief (taking into account section 1.6664-2(c)(3)) 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. If specific facts have changed since the original deadline that make the election advantageous to a taxpayer, the Service will not ordinarily grant relief.

Taxpayer in this case has represented that it reasonably relied on a qualified tax professional, and the tax professional failed to make, or advise the taxpayer to make, the election. Thus, under section 301.9100-3(b)(1)(v), Taxpayer will be deemed to have acted reasonably and in good faith. Taxpayer has also represented that none of the circumstances listed in section 301.9100-3(b)(3) apply.

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 under

section 6501(a) before the taxpayer's receipt of a ruling granting relief.

Under these criteria, the interests of the government are not prejudiced in this case. Taxpayer has represented that granting relief would not result in a lower tax liability in the aggregate for all taxable years affected by the election than Taxpayer would have had if the election had been timely made (taking into account the time value of money). Furthermore, the taxable year in which the regulatory election should have been made and any taxable years that would have been affected had it been timely made, are not closed by the period of assessment.

CONCLUSION

Taxpayer's election is a regulatory election, as defined under section 301.9100-1(b), because the due date of the election is prescribed in the regulations under section 1.565-1(b). In the present situation, the requirements of sections 301.9100-1 and 301.9100-3(b)(1)(v) of the regulations have been satisfied. The information and representations made by Taxpayer establish that Taxpayer acted reasonably and in good faith. Furthermore, granting an extension will not prejudice the interests of the Government. Taxpayer represented that it will not have a lower tax liability in the aggregate for all taxable years affected by the election if given permission to make the election than Taxpayer would have if the election were made by the original deadline for making the election. Taxpayer also represented that the period of assessment for Year 1 will not be closed before receipt of a ruling. Accordingly, Taxpayer is granted an extension of time for making the election to issue consent dividends for Year 1 in the amount of \$E from Tier 2 Sub to Tier 1 Sub and in the amounts of \$C and \$E from Tier 1 Sub to Taxpayer until 60 days following the date of this ruling. The election should be made by filing the forms necessary to make the section 565 consent dividend election for the taxable Year 1, and by including a copy of this ruling with an amended return for Year 1.

Except as expressly provided herein, no opinion is expressed or implied concerning the federal income tax consequences of any aspect of any transaction or item discussed or referenced in this ruling.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the

letter ruling.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Sincerely,

Christopher F. Kane
Branch Chief, Branch 3
(Income Tax & Accounting)