

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

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Refer Reply To:

CC:ITA:B03

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Date:

October 03, 2011

Taxpayer =

Parent =

Corporation =

Business A =

State =

Year 1 =

Year 2 =

Year 3 =

Year 4 =

Accounting firm 1 =

Accounting firm 2 =

\$x =

\$y =

\$z =

Dear :

This responds to a letter dated June 29, 2011, which requests 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.

FACTS

Taxpayer is a State limited liability company and is solely owned by Parent. Parent is engaged in Business A. Parent organized Taxpayer to hold, manage, protect and defend intellectual properties relating to Business A. Taxpayer licenses to Parent and other affiliates, as well as third party entities the right to use such intellectual properties, for which it collects royalties.

In Year 4, Corporation, the sole owner of Parent, hired Accounting Firm 1 to advise it with respect to tax matters. Accounting Firm 1 advised Parent that Taxpayer may be a personal holding company. After analysis, Parent's auditor, Accounting Firm 2 concluded that Taxpayer would be a personal holding company and would have personal holding company income for the tax Years 1, 2, and 3 in the amounts of \$x, \$y, and \$z, respectively.

LAW AND ANALYSIS

Section 565(a) provides that if any person owns consent stock (as defined in § 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 § 565(b), constitute a consent dividend for purposes of § 561 (relating to the deduction for dividends paid).

Section 1.565-1(a) of the Income Tax Regulations provides that the dividends paid deduction, as defined in § 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 § 1.565-1(b). Section 1.565-1(b)(3) provides that a consent may be filed not 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 § 1.565-1(b)(3) includes the extended due date of a return filed pursuant to an extension of the time to file.

Section 301.9100-3 of the Procedure and Administration 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 provides that requests for extensions of time for regulatory elections 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 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) 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 requested relief before the failure to make the election was discovered by the Service.

Under ' 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 ' 6662 at the time the taxpayer requests relief (taking into account § 1.6664-2(c)(3) of the Income Tax Regulations) and the new position requires 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 has represented that it is not seeking to alter a return position for which an accuracy-related penalty has been or could be imposed under ' 6662 at the time Taxpayer requests relief, and was not informed in all material respects of the required

election, and its related tax consequences, but chose not to file the election. Furthermore Taxpayer has represented that it is not using hindsight in requesting relief and that specific facts have not changed since the original deadline that made the election 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. Under these criteria, the interests of the government are not prejudiced in this case.

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 taxable Years 1, 2, and 3. 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. We enclose a copy of the letter for this purpose.

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

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.

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)