

## Internal Revenue Service

Number: **200105032**  
Release Date: 2/2/2001  
Index Nos: 9100.00-00, 565.01-02 and  
541.00-00

## Department of the Treasury

P.O. Box 7604  
Ben Franklin Station  
Washington, DC 20044

Person to Contact:  
Maxine M. Woo-Garcia, No. 50-009861  
Telephone Number:  
(202) 622-7900  
Refer Reply To:  
CC:ITA:1      PLR-101800-00

Date: October 27, 2000

Taxpayer1 =  
Taxpayer2 =  
Taxpayer3 =  
Taxpayers =

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

\$c =  
\$d =  
\$e =  
\$f =  
\$g =  
\$h =  
\$j =

Dear

This responds to your letter of January 14, 2000, and subsequent correspondence, requesting an extension of time, under §§ 301.9100-1 and -3 of the

Procedure and Administration Regulations, for Taxpayers to make consent dividend elections pursuant to § 565 of the Internal Revenue Code.

Taxpayers are members of a consolidated 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. Taxpayers are State X corporations. Taxpayer1 was incorporated on November 25, 1981. Taxpayer2 was incorporated on June 14, 1982. Taxpayer3 was incorporated on August 29, 1988.

Taxpayers have always relied on P of Parent-Corp for the compilation of its financial statements and the preparation of their annual corporate income tax returns. For all years at issue, S-Firm has been engaged by Parent-Corp to review the group's consolidated financial statements. Prior to Taxpayers' most recent financial statement review, neither Taxpayers, P, nor S-Firm were aware that Taxpayers were personal holding companies (PHCs) during the years at issue. Therefore, Taxpayers, P, and S-Firm were not aware of any need for making consent dividend elections for those years. The specific facts follow:

For the taxable years ended Date1, Year1, Year3, and Year4, Taxpayer1 failed to include Forms 972 and 973 in its federal tax returns. For the taxable years ended Date1, Year1, Year2, and Year3, Taxpayer2 failed to include Forms 972 and 973 in its federal tax returns. For the taxable years ended Date1, Year1, Year2, Year3, and Year4, Taxpayer3 failed to include Forms 972 and 973 in its federal tax returns. Although S-Firm reviewed the group's consolidated financial statements for all the years at issue, S-Firm did not prepare, review or have any involvement in the preparation or filing of Taxpayers' consolidated tax returns. Therefore, S-Firm was not in a position to determine that Taxpayers were subject to PHC tax. As a result, S-Firm did not alert Taxpayers of the issue.

In July 1999, during the review of Parent-Corp's consolidated financial statements for the year ended Date1, 1999, S-Firm for the first time inquired whether the company had considered the impact of the PHC tax. At first, P responded that the Parent-Corp consolidated group did not qualify as a PHC pursuant to the affiliated group rule of § 542(b)(1). S-Firm pointed out to P that § 542(b)(2) required Parent-Corp to test each separate company in the consolidated group to see if each separate company qualified as a PHC. P immediately took steps to determine whether any of the group companies were subject to PHC tax by applying the tests of § 542(b)(2). Applying the rules on a separate company by company basis, Taxpayers were identified as PHCs.

Taxpayers were not apprised of the liability for PHC tax or of the need to make

consent dividend elections at the time the group's consolidated income tax returns were filed. Taxpayers state that had P alerted Taxpayers of this issue, Parent-Corp would have agreed to Taxpayer1's consent dividends of approximately \$a, \$b and \$c for the taxable years ended Date1, Year2, Year3, and Year4, respectively; Taxpayer2's consent dividends of approximately \$d, \$e and \$f for the taxable years ended Date1, Year1, Year2 and Year3, respectively; and Taxpayer3's consent dividends of approximately \$g, \$h, \$g and \$g for the taxable years ended Date1, Year1, Year2, Year3, and Year4, respectively. These elections would have resulted in no additional income tax. However, Taxpayers are liable to pay approximately \$j in PHC tax absent consent dividend elections.

Taxpayers request the Commissioner's consent to extend the due date to make consent dividend elections under § 565 on Forms 972 and 973 as indicated below: for Taxpayer1 in the amounts of \$a, \$b and \$c for the taxable years ended Date1, Year2, Year3, and Year4, respectively; for Taxpayer2 in the amounts of \$d, \$e and \$f for the taxable years ended Date1, Year1, Year2 and Year3, respectively; and for Taxpayer3 in the amounts of \$g, \$h, \$g and \$g for the taxable years ended Date1, Year1, Year2, Year3, and Year4, respectively.

The failure to make consent dividend elections was due to the oversight of P who prepared the consolidated federal income tax returns of Parent-Corp and subsidiaries. Individuals X, Y, and Z, 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 Taxpayers acted reasonably and in good faith, having relied on P to prepare their returns during the tax years at issue. Hindsight may now indicate that the professionals in P may not have had the expertise necessary to adequately advise Taxpayers 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, Taxpayers are not attempting to alter a return position taken for which a penalty has been or could be imposed under § 6662. Further, Taxpayers were not informed of the need to make the elections under § 565 of the Code and so did not make any conscious choice as to whether or not to make the elections. In addition, there is no indication that Taxpayers are using hindsight, as defined above, in requesting this relief. This request for relief was made approximately six months after the failure to make the elections was discovered. While it is clear that Taxpayers carefully considered all options available to it with its tax advisors before filing this request for relief, specific facts have not changed since the due date for making the elections that make the election more advantageous to Taxpayers.

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 Taxpayers now seek to correct originated from

an honest mistake on the part of their 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 elections for each of the years at issue for each 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 Taxpayers' status as PHCs and relies on the determination of status as represented in Taxpayers' application for relief. This ruling is directed only to the Taxpayers 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: Douglas Fahey, Acting Chief  
Branch 5

cc: (1) DD - District  
Attn: Chief, Examination Division