

Internal Revenue Service

Department of the Treasury

Number: **200139003**

Release Date: 9/28/2001

Index Number: 9100.00-00

Washington, DC 20224

Person to Contact:

PLR-108080-01/CC:PSI:B5

Telephone Number:

Refer Reply To:

Date:

June 18, 2001

Legend

Corp 1 =

State A =

b =

Firm A =

SB/SE Official =

This is response to a request for rulings dated November 29, 2000, submitted by your authorized representative requesting relief under 301.9100-3 of the Procedure and Administration Regulations to make the consent dividend election under § 565(a) of the Internal Revenue Code.

Corp A was incorporated in State A on b. Corp A is currently invested primarily in rental properties, municipal bonds and stocks. The majority of the rentals consist of real property leased to commercial businesses.

According to the information submitted, during the tax years ending September 30, 1998 and September 30, 1999, Corp A was a personal holding company as defined under § 542(a) of the Code. Corp A had personal holding company income of \$ and \$ for the 1997 and 1998 tax years, respectively and paid dividends in the amount of for the 1997 tax year and \$ for the 1998 tax year. Corp A had undistributed personal holding company income of \$ and \$ for the 1997 and 1998 tax years, respectively.

Corp A did not have a tax director or any other tax professional on its staff. Firm A had been providing accounting and tax services since 1991 and had knowledge of all the relevant facts regarding Corp A and its shareholders. Firm A was required by

contract to "provide ... consultation on accounting and tax matters as you may require during the year and at year end." Corp A and its shareholders relied on Firm A to analyze all aspects of their tax situation, to make appropriate recommendations, to carry out the implementation of those recommendations, to determine what elections it was required or advisable to file, to supervise the preparation and presentation of all such elections, and to ensure that the appropriate documents were completed.

Firm A prepared compiled financial statements and income tax returns for Corp A and its shareholders for the 1997 and 1998 tax years. Firm A affirms by affidavit that it did not discuss the availability or recommend the consent dividend election orally or in written format with any of the corporate officers or shareholders of Corp A during the course of the preparation of the compiled financial statements, the preparation of the income tax returns for Corp A and shareholders, or in any other meetings with the corporate officers or the shareholders of Corp A during the 1997 and 1998 tax years.

Sections 301.9100-1 through 301.9100-3 provide the standards the Commissioner will use to determine whether to grant an extension of time to make an election.

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

Under § 301.9100-1(c), the Commissioner has discretion to grant a reasonable extension of time under the rules set forth in §§ 301.9100-2 and 301.9100-3 to make a regulatory election, or a statutory election (but no more than 6 months except in the case of a taxpayer who is abroad), under all subtitles of the Code except subtitles E, G, H, and I.

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 § 301.9100-2.

Requests for relief under § 301.9100-3(a) will be granted when the taxpayer provides evidence to establish that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the government.

In this case, good cause has been shown and the requirements of §§ 301.9100-1 and 301.9100-3 have been met. Accordingly, based on the facts submitted and the representations made, Corp A is granted an extension of time to file Forms 972 and 973 for the 1997 and 1998 tax years until or before 30 days from the date of this letter. In addition, a copy of this letter along with copies of the Forms should be sent to the SB/SE Official. A copy of this letter is enclosed for this purpose.

No opinion is expressed or implied regarding the application of any other provisions of the Code or regulations.

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

In accordance with the power of attorney on file, a copy of this letter is being sent to your authorized legal representative.

Sincerely yours,
PAUL F. KUGLER
Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures:

6110 copy
Copy of Letter