

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:
CC:PSI:5 PLR-130798-01
Date:
October 1, 2001

Legend

Corp A =
Sub =
b =

Dear

This is in response to a request for rulings dated April 18, 2001, 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 has requested an extension of time under §301.9100 for its subsidiary Sub to amend the amount of its timely made §565 consent dividend elections for the fiscal years through . The amended election would permit Sub to eliminate undistributed personal holding company income (UPHCI).

Corp A owns 100% of Sub. Sub, in turn, owns foreign subsidiaries primarily engaged in the sale of *b* products. Corp A files a consolidated return. For the FYE taxpayer met the stock ownership requirements for being a personal holding company and was an ineligible affiliated group, which required it to determine PHC status separately for each member of the group, leading to a determination that Sub was a PHC.

Taxpayer represents that it was its consistent policy and intention each year to make actual and/or consent dividends in the full amount that was required to eliminate any and all UPHCI. Accordingly, each year taxpayer calculated the amount of Sub's potential UPHCI and totally eliminated it by making consent dividends elections for the determined amounts. All elections were timely filed.

Taxpayer is currently under examination for earlier years (prior to). The Service has made adjustments which have increased the amount of UPHCI above the amounts of the timely claimed consent dividends for the years under audit. Consistent with its intent to eliminate any potential PHC, the taxpayer has filed this request to increase the amount of consent dividends for the later years (FYE) not under examination.

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 above law and the representations submitted, Corp A is granted an extension of time to file Forms 972 and 973 for the thru tax years on or before 30 days from the date of this letter. In addition, a copy of this letter should be filed along with the Forms. 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:

Copy for §6110 purposes
Copy of this letter