

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.

Telephone Number:

Refer Reply To:

CC:ITA:3

PLR-118179-04

Date:

November 18, 2004

In Re:

Legend

X =

Y =

Date A =

Date B =

Date C =

Date D =

Date E =

\$a =

Business P =

Accounting Firm –

Dear :

This responds to a letter dated February 26, 2004, 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.

X is a corporation engaged in Business P. X is wholly owned by Y. X and Y shared internal firm services with other related companies, including the accounting and financial reporting functions. During the tax year ending Date A, X and Y went through a reorganization that resulted in creating its own separate accounting and financial reporting function apart from that which previously serviced all related entities. As a result of the reorganization, the person who had been responsible for preparing X's financial statements moved to a different department and was no longer a part of X's and Y's accounting and financial reporting function. Due to the confusion which arose during the reorganization and changes in personnel, X's financial statements for the tax year ending on Date A were not timely prepared. As a result, the tax returns for the year could not be prepared and timely filed. X timely filed an extension of time to file its corporate tax return.

Accounting Firm has been preparing X's federal income tax returns since its tax year ending on Date E. Accounting Firm has routinely examined whether X had undistributed personal holding company income. Prior to the year ending on Date A, X had never had undistributed personal holding company income. Because the financial statements were not available, Accounting Firm relied on its historical knowledge that X did not have undistributed personal holding company income in previous years when it prepared Form 7004, Application for Automatic Extension of Time to File Corporate Income Tax Return. The extended due date for X's income tax return for the year ending on Date A was Date B. Subsequently, on Date C, Accounting Firm received X's financial statements for the tax year ending on Date A, and determined that Y had undistributed personal holding company income. After that, on Date D, X filed a Form 1120 for the tax year ending on Date A and executed a consent dividend election to eliminate the undistributed personal holding company income in the amount of \$a.

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 X and Y acted reasonably and in good faith, having failed to make the election timely because, as a result of the X's and Y's internal reorganization, X's financial statements showing undistributed personal holding company income for the year ending on Date A were not available at the time X's return was due, and therefore, the taxpayer was unaware of the necessity for the election.

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.

X 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 X requests relief, and was not informed in all material respects of the required election, because financial statements that would have demonstrated the necessity of the required election were not available as of the due date or extended due date of X's return.. Furthermore X is not using hindsight in requesting relief. Specific facts have not changed since the original deadline that made the election advantageous to X.

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 year ending on Date A. 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.

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 X's status as a personal holding company and relies on the determination of status as represented in X's application for relief. 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 the taxpayer. Also enclosed is a copy of the letter ruling showing the deletions proposed to be made in the letter when it is disclosed under § 6110 of the Internal Revenue Code.

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)