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Index Nos: 9100.00-00, 565.01-02 and 542.00-00

Internal Revenue Service

Department of the Treasury

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CC:DOM:IT&A:5 PLR-105916-99

Date: JUL 12 1999

Taxpayer	=
State X	=
Country Y	=
Parent-Corp	=
Z	=
V	=
S-Firm	=
D-Firm	=
P	=
Date1	=
Date2	=
Date3	=
Month4	=
Year1	=
Year2	=
Year3	=
w	=
ww	=

Dear

This responds to your letter of March 10, 1999, and subsequent correspondence, requesting an extension of time, under §§ 301.9100-1 and -3 of the Procedure and Administration Regulations, for Taxpayer and its shareholder to make consent dividend elections pursuant to § 565 of the Internal Revenue Code.

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Taxpayer is a State X Corporation, an accrual basis taxpayer, and a wholly owned subsidiary of Parent-Corp, a Country Y corporation whose sole shareholder is Z. Z is a Country Y citizen / resident and a V. Taxpayer was organized on Date1, Year1, to w.

From the date of its incorporation, Taxpayer has relied always and entirely on the advice and services of outside firms as to all matters related to its tax obligations. Upon formation, Taxpayer engaged the Country Y accounting firm, S-Firm, to provide various services, including the preparing and filing of all necessary income tax returns, including U.S. returns. S-Firm had previously performed similar services for Z and for other related entities. S-Firm timely prepared and filed Form 1120 for Taxpayer for its first taxable year that ended Date2, Year 2. Actual dividends were not distributed during the year and Forms 972 and 973 were not filed with the return. Taxpayer represents that it relied completely and in good faith on the tax advice provided by S-Firm.

In July of Year1, Taxpayer retained D-Firm, a U.S. accounting firm because of its expertise in ww. D-Firm performed accounting and compliance services, although such compliance services did not include the preparation of the U.S. income tax returns for the Date2, Year2 tax year. Sometime in the Autumn of Year2, Taxpayer expanded D-Firm's responsibilities to include the preparation of Taxpayer's U.S. income tax returns for its second tax year ending Date2, Year3, and the provision of general advice to Taxpayer with regard to U.S. taxation. In this connection, P, a partner of D-Firm, relates the following:

> Shortly thereafter, we began to receive relevant financial information and documentation, and, based on my knowledge and experience, it appeared to me that, judging from the information we received, [Taxpayer] was properly classified under U.S. tax law as a personal holding company ("PHC").

Further inquiry verified this impression. The term "personal holding company" is defined in section 542 of the Code. The determination of PHC status was based on the fact that 100% of its stock was indirectly owned by five or fewer individuals, and it derived most of its income from the performance of personal services, which constituted it as personal holding company income within the meaning of section 543(a)(7) of the Code. It was also determined that Taxpayer had a PHC status for the Date2, Year2 tax year, for which a return had already been filed, and for which the time for extensions was past.

D-Firm conveyed this conclusion to S-Firm in the Spring of Year3. Thereupon, S-Firm undertook its own independent review and verified the conclusion. Only then was Taxpayer advised of the problem, while it was still Spring. Upon receiving this

information, Taxpayer directed its advisors to resolve the issue. After verifying the existence of the problem, a consensus was reached between Taxpayer and its two retained accounting firms in Month4 of Year3.

Taxpayer's Form 1120 for the period ended Date2, Year3, was timely filed on Date3, Year3, reporting taxpayer as a PHC, and making the consent dividend election by including Forms 972 and 973. Taxpayer represents that had it been aware that it was a PHC, it would have filed Forms 972 and 973 for the tax year ended Date2, Year2 by the deadlines prescribed.

The failure to file Forms 972 and 973 for making the consent dividend election was due to the oversight of S-Firm. S-Firm acknowledges this error by a sworn affidavit.

Section 301.9100-1(c) of the regulations generally provides that the Commissioner, in his discretion, may grant a reasonable extension of time to make a regulatory election or a statutory election (but no more than six months except in the case of a taxpayer who is abroad) under all subtitles of the Internal Revenue Code except subtitles E, G, H and I.

The regulation under § 301.9100-3 provides extensions of time for making regulatory elections that do not meet the requirements of § 301.9100-2. For this purpose, § 301.9100-1 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) of the regulations 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) of the regulations 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 Taxpayer acted reasonably and in good faith, having relied entirely on S-Firm, a Country Y accounting firm, to prepare its returns and advise it on U.S. tax matters during the tax year at issue. Hindsight now indicates that

this Country Y accounting firm may not have had expertise necessary to adequately advise this taxpayer with respect to U.S. tax matters. However, this does not indicate that the reliance was unreasonable. Furthermore, the fact remains that Taxpayer retained tax professionals to handle tax matters on its behalf.

Section 301.9100-3(b)(3) of the regulations 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 IRS will not ordinarily grant relief. In such a case, the IRS 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, Taxpayer is not seeking to alter its return position. Further, Taxpayer was not informed of the need to make an election under § 565 of the Code and so did not make any conscious choice as to whether or not to make an election. In addition, there is no indication that Taxpayer was using hindsight, as defined above, in requesting this relief. While it is clear that Taxpayer 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 election that make the election more advantageous to the taxpayer.

Section 301.9100-3(c)(1)(i) of the regulations 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) of the regulations 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, Taxpayer will not have a lower tax liability in the aggregate for any of the years in which the election will apply than the taxpayer would have had if the election had been timely made (taking into account the time value of money). No taxable year that would be affected by the election, had it been timely made, is closed by the period of limitations on assessment.

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Taken together, these disclosed circumstances indicate that the omission that Taxpayer now seeks to correct originated from a mistake on the part of its tax advisors, and not from a desire to avoid taxes. This is substantiated by the fact that the tax return for the next period ended Date2, Year3, included the appropriate Forms 972 and 973. Since no prejudice to the government is indicated, Taxpayer's application for relief should be granted.

Accordingly, the consent of the Commissioner is hereby granted Taxpayer for an extension of time to file the appropriate forms necessary to make the section 565 consent dividend election. 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 Taxpayer's status as a personal holding company and relies entirely on the determination of status made by two independent accounting firms as represented in Taxpayer's application for relief. This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that a private letter ruling may not be used or cited as precedent.

Sincerely yours,

Assistant Chief Counsel
(Income Tax & Accounting)

by David L. Crawford /JFW
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