

Internal Revenue Service

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Department of the Treasury

P.O. Box 7604

Ben Franklin Station

Washington, DC 20044

Person to Contact:**Telephone Number:****Refer Reply To:**

CC:DOM:CORP:2 - PLR-115522-98

Date:

April 27, 1999

Re:

Parent =

Sub =

Business X =

Date 1 =

Date 2 =

Date 3 =

a =b =c =d =

Shareholder =

Dear _____ :

This is in response to a letter dated July 31, 1998 in which you requested a ruling on behalf of Parent and Sub that, under § 1504(a)(3)(B) of the Internal Revenue Code (the "Code"), the Service waive the general rule of § 1504(a)(3)(A) of the Code. Additional information was submitted in a letter dated November 2, 1998.

The pertinent information submitted indicates that Parent is a corporation engaged in Business X. Parent files its federal income tax return on a calendar year basis. On Date 1, Parent acquired 100% of the outstanding common stock of Sub. At all times relevant to this ruling, there was no Sub stock outstanding other than common stock. Parent and Sub elected to file a consolidated federal income tax return. Parent remained the sole shareholder of Sub common stock until Date 2. On Date 2, Sub issued a shares of common stock to certain individuals, including Shareholder, as compensation for services rendered. The value of the common stock issued was included in the compensation of each individual as shown on Form W-2. Shareholder received b shares. As a result of that issuance of stock, Parent's ownership of the total voting power and the total value of Sub fell from 100% to c%, resulting in the disaffiliation of Parent and Sub under § 1504(a) of the Internal Revenue Code.

Parent states that the reduction of Parent's ownership of Sub stock to less than 80% was inadvertent. After Parent management realized that Sub's stock issuance on Date 2 had caused a disaffiliation of Parent and Sub, Parent on Date 3 purchased from Shareholder the b shares of Sub stock that had been issued to Shareholder on Date 2 as compensation. The purchase price was equal to the value that had been included in Shareholder's compensation as a result of the Date 2 issuance of shares to Shareholder. The Date 3 purchase increased Parent's ownership of Sub shares to d% of both the total value and the total voting power of Sub, meeting the requirements of § 1504(a) of the Code. Parent subsequently filed this request that it be allowed to file consolidated returns with Sub for the period beginning on Date 3.

Parent has represented, and has submitted information indicating, that its disaffiliation on Date 2 and reaffiliation on Date 3 will not provide a benefit of a reduction in income, increase in loss, or any other deduction, credit, or allowance that would not otherwise be secured had the disaffiliation and reconsolidation not occurred. This representation forms a material basis for the issuance of this ruling letter.

Section 1504(a)(3)(A) of the Code provides that if a corporation is included (or required to be included) in a consolidated return filed by an affiliated group for a taxable year which includes any period after December 31, 1984, with respect to periods after such cessation, such corporation (and any successor of such corporation) may not be included in any consolidated return filed by the affiliated group (or by another affiliated group with the same common parent or a successor of such common parent) before the 61st month beginning after its first taxable year in which it ceased to be a member of such affiliated group.

Rev. Proc. 91-71, 1991-2 C.B. 900, grants an automatic waiver of the general rule of § 1504(a)(3)(A) of the Code for taxpayers that meet its requirements. If a taxpayer qualifies for the automatic waiver under Rev. Proc. 91-71, the procedure described therein is the exclusive procedure available for obtaining a waiver of the rule contained in § 1504(a)(3)(A). The automatic waiver in Rev. Proc. 91-71 generally applies to any corporation that left a group and rejoined the same group (i.e., the group remained in existence within the meaning of § 1.1502-75 of the Income Tax Regulations). The automatic waiver in Rev. Proc. 91-71 does not apply in this case because the Parent Group ceased to exist within the meaning of § 1.1502-75(d).

Based on the information submitted and representations made, it is concluded that:

Application of § 1504(a)(3)(A) of the Code is hereby waived. Provided that Parent and Sub constitute an affiliated group of corporations within the meaning of § 1504(a), Parent and Sub may join in the filing of a consolidated federal income tax return beginning with Date 3 and for subsequent years.

No opinion is expressed about the tax treatment of the transaction under any other provisions of the Code and regulations of about the tax treatment of any conditions existing at the time of, or effects resulting from, the transaction that are not specifically covered by the above ruling. Specifically, no opinion has been requested or is expressed about the income tax consequences of the issuance of a shares of Parent common stock to certain individuals on Date 2 or the purchase of b shares of Parent common stock from Shareholder by Parent on Date 3.

Temporary or final regulations pertaining to one or more of the issues addressed in this ruling have not yet been adopted. Therefore, this ruling will be modified or revoked by adoption of temporary or final regulations, to the extent the regulations are inconsistent with any conclusions in the ruling. See § 12.04 of Rev. Proc. 99-1, 1999-1 I.R.B. 6. However, when the criteria in § 12.05 of the Rev. Proc. are satisfied, a ruling is not revoked or modified retroactively, except in rare or unusual circumstances.

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

A copy of this letter should be attached to the federal income tax return of the taxpayers involved for the taxable year in which the transaction covered by this ruling letter is consummated.

Sincerely yours,
Assistant Chief Counsel (Corporate)

By: _____
Edward S. Cohen
Chief, Branch 2