

Internal Revenue Service

Department of the Treasury

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Date:

March 1, 1999

Parent =

Purchaser =

Sub 1 =

Sub 2 =

Sub 3 =

PSub 1 =

PSub 2 =

Date A =

Date B =

This is in response to a letter dated September 14, 1998, requesting a ruling pursuant to § 1504(a)(3)(B) of the Internal Revenue Code that the Secretary waive the general rule set forth in § 1504(a)(3)(A). Additional information was received in letters dated October 30, 1998, December 14, 1998, January 22, 1999, and February 15, 1999.

PLR-118014-98

The information submitted indicates that through Date A, Parent was the common parent of an affiliated group of corporations (the "Old Parent Group") that filed a consolidated return on a calendar year basis. The Old Parent Group consisted of Sub 1, Sub 2, Sub 3 (the "Historic Subsidiaries"), and Parent.

Purchaser is the common parent of another affiliated group (the "Purchaser Group") that files a consolidated return on a calendar year basis. On Date A, PSub1, a member of the Purchaser Group, completed a tender offer for some of the stock of Parent. The Parent stock acquired by PSub 1 in the tender offer, together with Parent stock already held by PSub 2, another member of the Purchaser Group, caused Parent and the Historic Subsidiaries to become affiliated members of the Purchaser Group (within the meaning of § 1504(a)). The Old Parent Group was thereby terminated. The Old Parent Group filed a final consolidated return for the period beginning on the first day of the calendar year and ending on Date A. Beginning the day after Date A (and for several years thereafter), Parent and the Historic Subsidiaries joined with Purchaser and its subsidiaries in the filing of the Purchaser Group's consolidated return. During this period, several additional corporations became affiliated subsidiaries of Parent (the "New Subsidiaries").

Parent has represented that on Date B, Parent, the Historic Subsidiaries, and the New Subsidiaries became disaffiliated from the Purchaser Group.

Section 1504(a)(3)(A) provides that if a corporation is included in a consolidated return filed by an affiliated group of corporations and such corporation ceases to be a member of such group, such corporation (and any successor of such corporation) may not be included in any consolidated return filed by the affiliated group (or by any other 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.

Parent wishes to file a consolidated return with its subsidiaries, including the Historic Subsidiaries, for the short period beginning on the day after Date B and ending on the last day of the calendar year (the "Short Period") and for subsequent taxable years. Because Parent and the Historic Subsidiaries are outside the scope of Rev. Proc. 91-71, 1991-2 C.B. 900, which grants an automatic waiver of § 1504(a)(3)(A) in certain circumstances, Parent and the Historic Subsidiaries are seeking a waiver under § 1504(a)(3)(B). In the interim, Parent and its subsidiaries have filed a timely consolidated return for the Short Period without first acquiring a waiver under § 1504(a)(3)(B).

In connection with its ruling request, Parent has represented that with respect to the Old Parent Group, the disaffiliation (on Date A) and reconsolidation (on the date after Date B) of the Old Parent Group (with the New Subsidiaries) will not provide a benefit of a reduction in income, increase in loss, or any other deduction, credit, or

PLR-118014-98

allowance that would not otherwise be secured or have been secured had the disaffiliation and reconsolidation not occurred, including, but not limited to, the use of a net operating loss or credit that would have otherwise expired. Parent has also represented that, with respect to the Purchaser Group, based on the information provided to the Old Parent Group by the Purchaser Group and all other information available to the Old Parent Group through reasonable due diligence efforts, the disaffiliation and reconsolidation of the Old Parent Group 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 or have been secured had the disaffiliation and reconsolidation not occurred, including, but not limited to, the use of a net operating loss or credit that would have otherwise expired.

In support of this representation, Parent has submitted credible information and calculations indicating that the disaffiliation and reconsolidation of the Old Parent Group (1) probably resulted in a net tax detriment to the Old Parent Group, and (2) based on the information available to Parent, which included the fact that the Purchaser Group took into account a substantial excess loss account (as defined in § 1.1502-19 of the Income Tax Regulations) upon Old Parent Group's disaffiliation from the Purchaser Group on Date B, did not give rise to a net tax benefit for the Purchaser Group. Parent has also demonstrated that obtaining all information potentially relevant for an analysis of the tax consequences for the Purchaser Group of the disaffiliation and reconsolidation of Old Parent Group was difficult under the circumstances due to ongoing litigation between certain members of the two groups. Finally, under the facts presented it does not appear that the Old Parent Group's disaffiliation from the Purchaser Group on Date B was motivated by tax considerations because, among other things, the disaffiliation occurred largely or entirely as a result of actions taken by third parties.

Based solely on the facts and information submitted and the representations set forth above, the five-year waiting period for reconsolidation prescribed in § 1504(a)(3)(A) is waived with respect to Parent and the Historic Subsidiaries. Provided that Parent, the Historic Subsidiaries, and the New Subsidiaries constitute an affiliated group of corporations within the meaning of § 1504(a), those corporations may file a consolidated return for the Short Period and for subsequent taxable years (subject to any other applicable limitations on the ability to file consolidated returns not discussed above).

PLR-118014-98

No opinion is expressed about the tax treatment of the transactions described in this letter under any other provisions of the Code and regulations not specifically covered by the above ruling. We specifically express no opinion as to whether or not Parent, the Historic Subsidiaries, and the New Subsidiaries constitute an affiliated group, and whether or not the Old Parent Group became disaffiliated from the Purchaser Group on Date B.

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.

A copy of this letter should be attached to the applicable federal income tax return of the taxpayer.

Sincerely,

Assistant Chief Counsel (Corporate)

By Michael J. Wilder

Michael J. Wilder

Assistant to the Branch Chief, Branch 3