

## 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:CORP:04

PLR-124196-09

Date:

October 06, 2009

Parent =

Sub =

Sub 1 =

Corp A =

Corp B =

Corp C =

Corp D =

Corp E =

Corp F =

Corp G =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Year 1 =

Dear

We respond to your letter dated May 11, 2009, requesting a ruling that, pursuant to section 1504(a)(3)(B) of the Internal Revenue Code, the Secretary waive the general rule of section 1504(a)(3)(A) of the Code, which generally provides that five years must elapse before a corporation that ceases to be a member of an affiliated group filing a consolidated return may join in the filing of a consolidated return with the same affiliated group. The information submitted for consideration is summarized below.

As of Date 1, Corp A, a life insurance company taxable under section 801, was the common parent of an affiliated group of corporations filing a life/nonlife consolidated federal income tax return. Corp A owned all of the stock of Corp B, a life insurance company taxable under section 801, and Corp C, a nonlife company. Corp C's subsidiaries included Corp D, Corp E, Corp F, and Corp G.

Parent is the common parent of an affiliated group of corporations that files a consolidated federal income tax return (the Parent group) based on a calendar year. Sub is a member of the Parent group. Immediately prior to Date 1, Sub owned 80 percent of the outstanding shares of Sub 1, also a member of the Parent group.

On Date 1, Sub 1 acquired Corp A by issuing shares of its stock as consideration to the Corp A shareholders, and as a result, Sub's ownership in Sub 1 fell below 80 percent. Thus, Sub 1 became deconsolidated from the Parent group.

Following the acquisition on Date 1, Sub 1 filed a separate consolidated federal income tax return with its nonlife subsidiaries, with Sub 1 as the common parent; Corp A and Corp B filed a separate life/life consolidated return pursuant to section 1504(c)(1) with Corp A as the common parent; and Corp C and its subsidiaries filed a separate nonlife consolidated return with Corp C as the common parent.

After Corp A and Corp B had been affiliated with the Sub 1 group for five years, Sub 1 made an election pursuant to section 1504(c)(2) to treat Corp A and Corp B as includible corporations and began filing a life/nonlife consolidated federal income tax return starting with the taxable year ended Date 3. Thus, Corp C and its subsidiaries

joined in the filing of the Sub 1 life/nonlife consolidated return, and Corp C and its subsidiaries ceased to be members of the Corp C consolidated group at the close of the taxable year ended Date 2.

On Date 4, Sub acquired all of the remaining outstanding shares of Sub 1. As a result, Sub 1 will join the Parent consolidated group for Year 1. However, pursuant to section 1504(c)(2), Corp A and Corp B will not be eligible to join the Parent group because they have not been affiliated with the Parent group for the five taxable years preceding Year 1. Moreover, Corp C and its subsidiaries will not be eligible to join in their own nonlife consolidated group, absent a waiver of section 1504(a)(3)(A).

Section 1504(a) of the Code defines the term “affiliated group” to mean one or more chains of includible corporations connected through stock ownership with a common parent which is an includible corporation.

Section 1504(b)(2) of the Code provides that the term “includible corporation” means any corporation except insurance companies subject to taxation under § 801.

Section 1504(c)(2)(A) of the Code provides that when an affiliated group (determined without regard to subsection (b)(2)) includes one or more domestic insurance companies taxed under § 801, the common parent of such group may elect (pursuant to regulations prescribed by the Secretary) to treat all such companies as includible corporations for purposes of applying subsection (a) except that no such company shall be so treated until it has been a member of the affiliated group for the five taxable years immediately preceding the taxable year for which the consolidated return is filed.

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 and such corporation ceases to be a member of such group, that 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.

Section 1504(a)(3)(B) of the Code provides that the Secretary may waive application of section 1504(a)(3)(A) to any corporation for any period subject to such conditions as the Secretary may prescribe.

Section 1504(a)(3)(A) was enacted by section 60(a) of the Tax Reform Act of 1984. Congress authorized Treasury to waive this provision subject to such conditions as Treasury may prescribe. The Conference Report states that the rule prohibiting consolidation after deconsolidation is an anti-abuse rule. H.R. Conf. Rep. No. 861, 98th Cong., 2d Sess. 833 (1984).

In this case, the disaffiliation and the reconsolidation of the Corp C nonlife consolidated group was not abusive, but rather resulted from the interaction of the five-year requirements of section 1504(c)(2) and section 1504(a)(3)(A).

Based on the facts and information submitted and the representations made, we rule that the application of section 1504(a)(3)(A) is waived so that Corp C and its subsidiaries may join in the filing of a consolidated federal income tax return of which Corp C is the common parent beginning with the Year 1 taxable year.

No opinion is expressed about the tax treatment of the transactions under other provisions of the Code or regulations or the tax treatment of any conditions existing at the time of, or effects resulting from, the transactions that are not specifically covered by the above rulings.

The ruling contained in this letter is based on facts and representations submitted by the taxpayer and accompanied by a penalties of perjury statement executed by an appropriate party. This Office has not verified any of the materials submitted in support of the request for the ruling. Verification of the information and other data may be required as part of the audit process.

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 your authorized representatives.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

Sincerely,

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Gerald B. Fleming  
Senior Technician Reviewer, Branch 2  
Office of Associate Chief Counsel (Corporate)

cc: