

**Internal Revenue Service**

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Department of the Treasury  
Washington, DC 20224

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:CORP:B03 – PLR-169167-03

Date:

February 09, 2004

Re:

Parent =

Sub1 =

Sub2 =

State A =

State B =

Business F =

Date 1 =

Year 1 =

Company Official =

Tax Preparer =

Dear

This letter is in response to a letter dated December 5, 2003, requesting that the Commissioner treat Sub1 as having joined in the filing of a consolidated income tax return with Parent and Sub2 for calendar year Year 1, under §1.1502-75(b)(3) of the Income Tax Regulations. The facts submitted are substantially as set forth below.

Parent is a State A corporation which is engaged in Business F. During calendar year Year 1, Parent was the common parent of an affiliated group comprised of Parent, Sub1, and Sub2. Parent and Sub2 filed a consolidated return for calendar year Year 1.

On Date 1, Company Official discovered that Sub1 had been omitted from Parent's consolidated federal income tax return when he received a notice from the State B taxing agency for past due tax. Before receiving the notice, Company Official had no actual knowledge of the existence of Sub1. Tax Preparer was not informed of the existence of Sub1 in connection with the preparation and filing of the consolidated federal income tax return for calendar year Year 1. Sub1 was incorporated prior to Year 1 and is a dormant entity. Sub1 has conducted no business, held no assets, had no items of income, gain, deduction or credit from its date of incorporation through the date of this request. Sub1 has never filed a separate federal income tax return.

Section 1.1502-75(a)(1) of the regulations provides that a group which did not file a consolidated return for the immediately preceding taxable year may file a consolidated return in lieu of separate returns for the taxable year, provided that each corporation which has been a member during any part of the taxable year for which the consolidated return is to be filed consents to the regulations under §1502.

Section 1.1502-75(b)(1) provides that the consent of a corporation shall be made by such corporation joining in the making of a consolidated return for such year. A corporation shall be deemed to have joined in the making of such return for such year if it files a Form 1122 in the manner specified in §1.1502-75(h)(2) of the regulations.

Section 1.1502-75(h)(2) provides that if a group wishes to exercise its privilege of filing a consolidated return, then a Form 1122 must be executed by each subsidiary and must be attached to the consolidated return for such year.

Section 1.1502-75(b)(3) provides that if any member has failed to join in the making of a consolidated return, then the tax liability of each member of the group shall be determined on the basis of separate returns unless the common parent corporation establishes to the satisfaction of the Commissioner that the failure of such member to join in the making of the consolidated return was due to mistake of law or fact, or to

inadvertence. In such cases, such member shall be treated as if it had filed a Form 1122 for such year and joined in the making of the consolidated return for such year.

Based solely on the facts and information submitted, it is held that Parent has established to the satisfaction of the Commissioner that it inadvertently excluded Sub1 in making its consolidated return for calendar year Year 1. Sub1 shall be treated as if it had filed a Form 1122 for calendar year Year 1, for purposes of §1.1502-75(h)(2), and thus joined in the making of the consolidated return for such year (§1.1502-75(b)(3)).

Within 45 days of the date on this letter, Parent shall file amended returns for calendar year Year 1 and all subsequent years necessary, to include Sub1 on Parent's affiliation schedule, Form 851. A copy of this letter must be attached to the tax returns.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically, no opinion is expressed as to the date Sub1 became a member of Parent's affiliated group.

This ruling is directed only to the taxpayer(s) 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 Parent and to a second authorized representative.

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,

*Ken Cohen*

Ken Cohen  
Senior Technician Reviewer, Branch 3  
Office of Associate Chief Counsel  
(Corporate)