

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

CC:CORP:06-PLR-145482-02

Date:

September 10, 2002

Legend

Corp 1 =

Corp 2 =

Corp 3 =

Corp 4 =

Corp 5 =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Date 7 =

Date 8 =

Date 9 =

Date 10 =

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Date 11 =

Year 1

#a =

#b =

#c =

#d =

State A =

State B =

Dear

This letter is in reply to your letters dated August 15, 2002 and September 6, 2002 requesting a ruling on behalf of Corp 2 that, under section 1504(a)(3)(B) of the Internal Revenue Code, the Internal Revenue Service will waive the general rule of section 1504(a)(3)(A).

The information submitted indicates that Corp 2 was incorporated in State A on Date 1, and is the common parent of an affiliated group of corporations (the "Corp 2 Group") filing a consolidated return. Corp 2 is the successor (pursuant to a purported section 368(a)(1)(F) reorganization) to Corp 1. Corp 1 was incorporated on Date 2, and was the common parent of an affiliated group of corporations that first elected to file a consolidated Federal income tax return prior to Year 1.

On Date 3, Corp 3 acquired Corp 4, an State A corporation. As a result, Corp 4 and its affiliated subsidiaries became members of the Corp 3 affiliated group that filed a consolidated return for the year ending Date 4.

On Date 5, Corp 2 acquired Corp 3. As a result, Corp 3 and its subsidiaries joined the Corp 2 group.

Subsequently (but prior to Date 6), Corp 3 distributed the stock of Corp 4 to Corp 2. Accordingly, Corp 4 became a direct wholly owned subsidiary of Corp 2.

On Date 7, Corp 4 reincorporated in State B and changed its name to Corp 5 pursuant to a purported reorganization within the meaning of section 368(a)(1)(F). On Date 6 #a shares of Corp 5 common stock were sold to the public in an initial public

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offering (the "IPO"). The IPO caused Corp 5 and its subsidiaries to become deconsolidated from the Corp 2 group. (Corp 2's ownership in Corp 5 was reduced to #b).

In response to poor market conditions, and a determination by Corp 2 that the Corp 5 stock was undervalued, on Date 8, Corp 2 purchased #c shares of Corp 5 stock on the open market. For similar reasons, on Date 9, Corp 5 repurchased #d shares of its common stock on the open market. As a result, Corp 5 and its subsidiaries became reaffiliated with Corp 2. On Date 10, Corp 2 acquired the remaining shares of Corp 5 held by the public

Section 1504(a)(3)(A) 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 that includes any period after December 31, 1984, and the corporation ceases to be a member of the group in a taxable year beginning after December 31, 1984, for periods after the cessation, the corporation (and any successor of the 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 the common parent) before the 61st month beginning after the first taxable year in which it ceased to be a member of the affiliated group. Thus Corp 5 (and its subsidiaries) would be prevented from rejoining the consolidated return of the Corp 2 group. However, section 1504(a)(3)(B) allows the Secretary to waive the 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. The Conference report stated that the rule prohibiting consolidation after deconsolidation was an anti-abuse rule. H.R. Conf. Rep. No. 98-861, at 833 (1984).

Rev. Proc. 2002-32, 2000-20 I.R.B. 959, grants an automatic waiver of the section 1504(a)(3)(A) general rule for taxpayers who meet its requirements. If a taxpayer qualifies for the automatic waiver, the process described in the revenue procedure is the exclusive means for obtaining a waiver of section 1504(a)(3)(A). The automatic waiver generally applies to any corporation (a deconsolidated corporation) (1) that was included (or was required to be included), or whose predecessor was included (or was required to be included), in a consolidated return filed (or required to be filed) by an affiliated group (the original group), (2) that ceased, or whose predecessor ceased, to be a member of such original group, and (3) that subsequently became affiliated with that original group (or another affiliated group with the same common parent or a successor of such common parent) before the 61st month beginning after the first taxable year in which it or its predecessor ceased to be a member of the original group.

To obtain an automatic waiver of section 1504(a)(3)(A), the deconsolidated corporation must be included in a timely-filed consolidated return (including extensions)

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of the affiliated group with respect to which the waiver request relates (the current group), for the taxable year that includes the date on which such corporation most recently became a member of such affiliated group. Corp 2 did not include in a timely-filed consolidated return the deconsolidated corporations (Corp 5 and its subsidiaries) for the taxable year that included the date on which the deconsolidated corporations most recently became members of Corp 2's affiliated group. Therefore, Corp 5 and its subsidiaries cannot rejoin the group to which they belonged before the disaffiliation. Further, Corp 5 cannot avail itself of the automatic waiver. Consequently, the parties in this case must obtain a ruling granting a section 1504(a)(3)(B) waiver before a consolidated return may be filed by Corp 5 and its subsidiaries.

Corp 2 represents that the disaffiliation and subsequent consolidation has not provided and will not provide the Corp 2 group or Corp 5 and its subsidiaries a benefit of a reduction in income, increase in loss, or any other deduction, credit, or allowance (a Federal tax savings) that would not otherwise be secured or have been secured had the disaffiliation and subsequent consolidation not occurred, including, but not limited to, the use of a net operating loss or credit that would have otherwise expired, or the use of a loss recognized on a disposition of stock of Corp 5 or any of its subsidiaries.

Corp 2 is the common parent of the group from which Corp 5 and its subsidiaries deconsolidated. Corp 2 represents that it was not an S corporation, an entity disregarded as an entity separate from its owner, a real estate investment trust, or a regulated investment company at any time during the period of disaffiliation.

The representations submitted by the taxpayer form a material basis for issuance of this ruling letter. Based upon the information submitted and on the representations set forth above, we rule that, pursuant to section 1504(a)(3)(B), the application of section 1504(a)(3)(A) is hereby waived. Provided that Corp 2 and Corp 5 and its subsidiaries constitute an affiliated group of corporations within the meaning of section 1504(a), Corp 5 and its subsidiaries may join in the filing of a consolidated federal income tax return with Corp 2 beginning on Date 11 and for subsequent tax years.

No opinion is expressed or implied about the tax treatment of the transactions described above 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 ruling.

A copy of this letter should be attached to the consolidated federal income tax return of the taxpayer involved for the taxable year including Date 11.

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.

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Pursuant to the power of attorney on file with this office, we have sent a copy of this letter to the taxpayer.

Sincerely yours,

Alfred C. Bishop, Jr.

Alfred C. Bishop, Jr.
Branch Chief, Branch 6
Office of Associate Chief Counsel (Corporate)