

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

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Person To Contact:

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PLR-158087-04

Date:

February 24, 2005

Legend

Parent Affiliated Group =

Parent =

Sub 1 =

Sub 2 =

Sub 3 =

Sub 4 =

Sub 5 =

Sub 6 =

Sub 7 =

Sub 8 =

Sub 9 =

Sub 10 =

Sub 11 =

Sub 12 =

Sub 13 =

Sub 14 =

Sub 15 =

Sub 16 =

Sub 17 =

Sub 18 =

Sub 19 =

Sub 20 =

Sub 21 =

Sub 22 =

Date B =

Date C =

Date D =

Date E =

Date F =

Date G =

Firm X =

Dear :

This letter responds to your authorized representative's letter dated November 3, 2004, requesting that the Commissioner make determinations: that subsidiaries Sub 1 through Sub 22 have all joined in the making of the initial consolidated return filed by Parent for the short period beginning on Date B and ending on Date C as well as in making the subsequent consolidated return for the calendar year ending Date F. Additional information was submitted in letters dated January 13, 2005 and February 8, 2005. The information, submitted in the above-mentioned letters, is summarized below.

Parent is a domestic corporation primarily formed for the purpose of purchasing the stock of Sub 1 and its subsidiaries. On Date D (the day before Date B), Parent purchased all of the outstanding stock of Sub 1. Prior to Parent's purchase of Sub 1's stock on Date D, Sub 1 was the common parent of a consolidated group of corporations, composed of Sub 2 through Sub 22.

Parent, acting as the agent for the Parent Affiliated Group, filed the initial consolidated federal income tax return with subsidiaries Sub 1 through Sub 22 (hereinafter sometimes referred to as the "Sub 1 Group") for the short tax period ending Date C. The Parent's consolidated return included the income and deductions of each member of the Sub 1 Group from Date B (the day after Date D) through Date C. The Parent's consolidated federal income tax return was timely filed by Date E (by the due date, including extensions, for filing the return). A consolidated federal income tax return for the calendar tax year ended Date F was filed on Date G. Firm X prepared these returns.

Each corporation in the Sub 1 Group was properly included on the Forms 851, Affiliations Schedule, filed with Forms 1120 for the years ended Date C and Date F. However, Parent in filing the consolidated tax return for the initial tax year ending Date C inadvertently omitted the required Forms 1122 ("Authorization and Consent of Subsidiary Corporation to be included in a Consolidated Tax Return") for all the members of the Sub 1 Group. Firm X, on behalf of Parent, has requested rulings with respect to Parent's omission to file Forms 1122.

Representations

The taxpayer has made the following representations.

(1) All the income and deductions of Parent and its affiliated (within the meaning of section 1504) subsidiaries, including Sub 1 and its affiliated (within the meaning of section 1504) subsidiaries, were included in the consolidated federal income tax returns filed by Parent for the tax years ending Date C and Date F.

(2) Neither Parent nor any of its affiliated (within the meaning of section 1504) subsidiary corporations filed a separate income tax return for either of the tax years ending Date C or Date F.

(3) Each member of the Parent Affiliated Group, including Sub 1 and its affiliated (within the meaning of section 1504) subsidiaries, was included on a Form 851 that was attached to the consolidated returns filed by Parent for the tax years ending Date C and Date F.

Analysis

Section 1.1502-75(a)(1) of the Income Tax Regulations, provides, in part, that an affiliated group of corporations 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 of the group during any part of the taxable year for which the consolidated return is to be filed consents, in accordance with section 1.1502-75(b), to the regulations issued under section 1502.

Section 1.1502-75(a)(2) provides that a group which filed (or was required to file) a consolidated return for the immediately preceding taxable year is required to file a consolidated return for the taxable year, unless it has been granted permission by the Commissioner to discontinue filing consolidated returns.

With regard to the consent of a corporation for a group's first consolidated year, section 1.1502-75(b)(1) provides, as a general rule, that the consent of a corporation shall be made by such corporation joining in the making of the consolidated return for such year and that 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 section 1.1502-75(h)(2).

Section 1.1502-75(h)(2) provides that a Form 1122 must be executed by each subsidiary and attached to the consolidated return for that first taxable year of the group (The rules for properly executing Forms 1122 and attaching them to a consolidated return are now in Temp. Regulations section 1.1502-75T(h)(2)). These provisions also provide that a Form 1122 shall not be required for a taxable year if a consolidated return was filed (or was required to be filed) by the group for the immediately preceding taxable year.

Section 1.1502-75(b)(2) of the regulations provides that if a member of the group fails to file the Form 1122, the Commissioner may under the facts and circumstances determine that such member has nevertheless joined in the making of a consolidated return by such group. Factors that the Commissioner will take into account in making this determination include the following:

- (i) The income and deductions of each member for such taxable year were included in the consolidated return;
- (ii) No separate return was filed by any member for that taxable year; and
- (iii) Each member of the group was included in the affiliations schedule, Form 851 for such taxable year.

Where the Commissioner under the facts and circumstances determines that the member has joined in the making of a consolidated return, such member will be treated for purposes of Treas. Reg. § 1.1502-75(h)(2) as if it had filed a Form 1122 for such year. Treas. Reg. § 1.1502-75(b)(2) flush language.

Based on the information and representations made, each member of the group has satisfied each of the above factors for the group's first taxable year ending on Date C, and, therefore, each member is determined to have joined in the making of a consolidated return for that taxable year. Having joined in the making of a consolidated return for the initial consolidated tax year ending on Date C, the members of the group

are thus required to join in filing a consolidated return for the following consolidated tax year ending on Date F.

Rulings

Based on the information submitted and representations made, we rule that, for purposes of section 1.1502-75(h)(2) of the Federal Income Tax Regulations, Parent is treated as if it filed a Form 1122— on behalf of each of the Sub 1 Group subsidiaries— with the consolidated tax return of the Parent Affiliated Group for their taxable year ending Date C. Thus, each of the Sub 1 Group subsidiaries properly joined in the making of the Parent Affiliated Group's consolidated return for the taxable years ending on Date C and ending on Date F.

Caveats

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.

This ruling is directed only to the taxpayers (the Parent and its affiliated subsidiaries) requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Parent should forward a copy of this letter to the Service Center where the group's consolidated returns for the tax years ending Date C and ending Date F were filed.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your 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,

Steven J. Hankin

Steven J. Hankin
Senior Technician Reviewer, Branch 6
Office of Associate Chief Counsel
(Corporate)