

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:

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CC:CORP:B04

PLR-148875-04

Date:

January 04, 2005

Legend

Target =

Sub 1 =

Sub 2 =

Sub 3 =

Sub 4 =

Sub 5 =

Sub 6 =

Acquiring =

a =

b =

c =

Date A =

Date B =

Date C =

Date D =

Date E =

Date F =

Date G =

Dear :

This is in response to a letter dated September 10, 2004, 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 a letter dated December 14, 2004.

The information submitted indicates that, prior to Date A, Target was the common parent of an affiliated group of corporations that filed a consolidated return (the "Target group"). Immediately prior to Date A, Target owned all the outstanding stock of Sub 1 and Sub 2, and Sub 1 owned all the outstanding stock of Sub 3, Sub 4, Sub 5, and Sub 6 (hereinafter sometimes referred to as the "Historic Subsidiaries").

Acquiring is the common parent of an affiliated group of corporations that files a consolidated return (the "Acquiring Group"). Prior to Date B, Acquiring owned no stock in Target or any member of the Target group. On or about Date B, Acquiring purchased a percent of Target's outstanding stock. On or about Date A, Acquiring purchased an additional b percent of Target's outstanding stock. As a result of the Date A and Date B stock purchases, the Target group was terminated pursuant to Treas. Reg. § 1.1502-75(d)(1) and was required to join in the filing of the Acquiring group's consolidated return pursuant to § 1501 and Treas. Reg. § 1.1502-76(b)(1). Thereafter, Acquiring filed a consolidated tax return that included Target and its Historic Subsidiaries for the period beginning Date C (i.e., the day after Date B) through Date D.

On or about Date E, Target's employees, acting on their own initiative, exercised stock options and purchased stock in Target. The exercise of the options had the effect of diluting Acquiring's ownership in Target below 80 percent as of Date E. As a result, Target and its Historic Subsidiaries ceased to be members of the Acquiring group.

Target wishes to file a consolidated federal income tax return with its Historic Subsidiaries for the short period Date F through Date G, and for subsequent taxable years. Because Target is outside the scope of Rev. Proc. 2002-32, 2002-1 C.B. 959, which grants an automatic waiver of § 1504(a)(3)(A) in certain circumstances, Target is seeking a waiver under § 1504(a)(3)(B).

Section 1504(a)(3)(A) provides that if a corporation is included in a consolidated federal income tax return filed by an affiliated group of corporations and such corporation ceases to be a member of such group, such corporation (or any successor of such 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. Thus, Target and its Historic Subsidiaries would be prevented from filing a consolidated return. However, § 1504(a)(3)(B) allows the Secretary to waive the application of § 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 states 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 grants an automatic waiver of the general rule of § 1504(a)(3)(A) for taxpayers who meet its requirements. Section 5 of Rev. Proc. 2002-32 specifies the information and representations to be included in a request for an automatic waiver. Section 5.14 of Rev. Proc. 2002-32 provides that the request must include a representation that the disaffiliation and subsequent consolidation has not provided and will not provide 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 otherwise have expired, or the use of a loss recognized on a disposition of stock of the deconsolidated corporation or a predecessor of such corporation. Section 5.14 of Rev. Proc. 2002-32 further provides that in determining whether the disaffiliation and subsequent consolidation provided or will provide a federal tax savings, the net tax consequences to all parties, taking into account the time value of money, are considered.

Section 7 of Rev. Proc. 2002-32 provides that if a deconsolidated corporation cannot qualify for an automatic waiver, a waiver under § 1504(a)(3)(B) may only be obtained through a letter ruling request. Section 7 of Rev. Proc. 2002-32 further provides that the ruling request should include the information set forth in § 5 of Rev. Proc. 2002-32. Section 7 of Rev. Proc. 2002-32 further provides that, to the extent that the representations set forth in §§ 5.03 or 5.14 of Rev. Proc. 2002-32 cannot be made, the letter ruling request must: (1) contain information establishing that federal tax savings was not a purpose of the disaffiliation, and that the amount of any federal tax

savings attributable to the disaffiliation or a subsequent consolidation is not significant; and (2) state whether the deconsolidated corporation or a predecessor of such corporation was, at any time during the period of disaffiliation, in the effective control of any member (or successor of any member) of the current group or the former group.

It is represented that except for obtaining a tax benefit in the form of the use of losses of the Acquiring group to offset approximately \$c of taxable income of the Target group during the period of their affiliation, the deconsolidation and reconsolidation of the Target group has not provided and 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 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 the deconsolidated corporation or a predecessor of such corporation.

Based solely on the information submitted and the representation set forth above, we rule that, pursuant to § 1504(a)(3)(B), the application of § 1504(a)(3)(A) is waived. Provided that Target and its Historic Subsidiaries constitute an affiliated group of corporations within the meaning of § 1504(a), Target and its Historic Subsidiaries may file a consolidated federal income tax return for the short period Date F through Date G and for subsequent tax years.

The ruling contained in this letter is based upon information and representations submitted by the taxpayer and accompanied by a penalties 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.

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 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 representative.

Sincerely,

Sean P. Duffley
Assistant to the Chief, Branch 4
Office of Associate Chief Counsel
(Corporate)