

## Internal Revenue Service

## Department of the Treasury

Number: **200135032**  
Release Date: 8/31/2001  
Index Number: 1504.00-00

Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

**CC:CORP:3 - PLR-121720-01**

Date:

**June 1, 2001**

New Parent =

Old Parent =

Sub 1 =

Sub 2 =

Sub 3 =

Third Party =

License =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

X =

We respond to your April 13, 2001, request for a ruling on behalf of New Parent that, under § 1504(a)(3)(B) of the Internal Revenue Code, the Internal Revenue Service will waive the general rule of § 1504(a)(3)(A). You submitted additional information in a letter dated May 7, 2001.

The information submitted indicates that as of Date 1, Old Parent was the common parent of a consolidated group, which included Sub 1. On Date 2, Sub 1 formed Sub 2 and contributed the stock of Sub 3 to Sub 2. On Date 3, Sub 2 issued

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shares constituting  $\underline{x}$  percent of its outstanding stock to Third Party in order to obtain License. Sub 2 issued more shares in an initial public offering on Date 4, causing Sub 1's ownership of Sub 2 to fall below 80 percent. On Date 5, Old Parent merged with and into New Parent in a transaction intended to qualify under § 368(a)(1)(A) ("Merger 1") and Sub 2 merged with and into Sub 1 in a transaction intended to qualify under § 368(a)(2)(D) ("Merger 2"). The taxpayers have represented that neither of these transactions was a reverse acquisition within the meaning of § 1.1502-75(d)(3) of the Income Tax Regulations. As a result of these transactions, Sub 2 and its subsidiaries left a consolidated group and, within 60 months, joined a group the common parent of which is the successor to the common parent of Sub 2's former group.

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 Sub 2 (and its subsidiaries) would be prevented from joining the consolidated return of the New Parent group. 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 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. 91-71, 1991-2 C.B. 900, grants an automatic waiver of the § 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 § 1504(a)(3)(A). The automatic waiver generally applies to any corporation that ceased to be a member of a group and rejoins the same group (i.e., the group remained in existence within the meaning of § 1.1502-75). Because Merger 1 terminated the Old Parent consolidated group, Sub 2 cannot rejoin the group to which it belonged before the disaffiliation and therefore cannot avail itself of the automatic waiver. Consequently, the parties in this case must obtain a ruling granting a § 1504(a)(3)(B) waiver before a consolidated return may be filed.

New Parent represents that the transactions described herein have 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 had the transactions not occurred, including, but not limited to, the use of a net operating loss or credit that would otherwise have expired.

The representations submitted by the taxpayer form a material basis for

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issuance of this ruling letter. Based upon the information submitted and on the representations set forth above, we rule that, pursuant to § 1504(a)(3)(B), the application of § 1504(a)(3)(A) is hereby waived. Provided that New Parent and Sub 1 and their subsidiaries constitute an affiliated group of corporations within the meaning of § 1504(a), Sub 2 and its subsidiaries through its successor, Sub 1, may join in the filing of a consolidated federal income tax return with New Parent beginning on Date 6 and for subsequent taxable 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 rulings. Specifically, no opinion is expressed concerning the tax consequences of Merger 1 or Merger 2.

Temporary or final regulations pertaining to one or more of the issues addressed in this ruling have not yet been adopted. Therefore, this ruling will be modified or revoked by adoption of temporary or final regulations, to the extent the regulations are inconsistent with any conclusions in the ruling. See section 12.04 of Rev. Proc. 2001-1, 2001-1 I.R.B. 1, 46. However, when the criteria in section 12.05 of the revenue procedure are satisfied, a ruling is not revoked or modified retroactively, except in rare or unusual circumstances.

A copy of this letter should be attached to the consolidated federal income tax return of the taxpayers involved for the taxable year including Date 6.

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.

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

Sincerely yours,  
Associate Chief Counsel (Corporate)

By: Filiz A. Serbes  
Chief, Branch 3