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Department of the Treasury

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Date:

March 17, 2000

Parent =

Intermediate =

Sub 1 =

Sub 2 =

Sub 3 =

Sub 4 =

Sub 5 =

Sub 6 =

Sub 7 =

Newco =

Corporation X =

Corporation Y =

Business A =

Year 1 =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5	=
Date 6	=
Date 7	=
Date 8	=
Date 9	=
Date 10	=
Date 11	=
Date 12	=
<u>a</u> %	=
<u>b</u> %	=
<u>c</u> %	=
<u>d</u> %	=
Country Y	=

This is in response to a letter dated July 26, 1999 in which you requested a ruling on behalf of Parent that, under § 1504(a)(3)(B) of the Internal Revenue Code (the “Code”), the Service waive the general rule of section 1504(a)(3)(A) of the Code. Additional information was received in letters dated October 18, 1999 and December 28, 1999.

The information submitted indicates that Parent is the common parent of an affiliated group of corporations filing consolidated federal income tax returns on a calendar year basis. The group filed its first consolidated return for Year 1.

As of Date 1, Parent owned 100 percent of the outstanding stock of Intermediate. Intermediate owned 100 percent of the outstanding stock of Sub 1. Sub 1 owned 100 percent of the outstanding stock of Sub 2, Sub 3, Sub 4, and Sub 5 (the “Sub 1 Subsidiaries”). Sub 3 owned less than 80% of Sub 6, with the remaining Sub 6 stock owned by unrelated third parties.

On Date 2, Intermediate transferred 100 percent of the stock of Sub 1 to Newco, a newly formed corporation, in exchange for a% (a percentage less than 80%) of Newco common stock, the only class of stock of Newco. As part of the same transaction, Corporation X, a Country Y corporation, contributed cash, notes receivable, and other property to Newco in exchange for the remaining Newco common stock. Parent has represented that the above described transaction qualified under section 351 of the Code. As a result of that transaction, Sub 1 ceased to be a member of the Parent affiliated group.

The Parent group filed a full-year consolidated federal income tax return for the taxable year that included Date 2. That return included the activities of Sub 1 and the Sub 1 Subsidiaries for the period ending Date 2. Newco, Sub 1, and the Sub 1 Subsidiaries filed a short-period federal consolidated income tax return for the period beginning Date 3 (i.e., the date following Date 2) through Date 4.

On Date 5, Sub 3 purchased from an unrelated third party sufficient stock of Sub 6 that caused Sub 6 to become a member of the Newco affiliated group. On Date 6, Sub 2 merged into Sub 6 in what is represented to be a reorganization qualifying under section 368(a)(1)(A) of the Internal Revenue Code.

Also on Date 6, Parent formed Sub 7 and transferred Sub 7 to Intermediate. On Date 8, Intermediate transferred Sub 7 to Newco as part of what is represented to be a section 351 transaction, described below, that was consummated on Date 9.

On Date 7, Sub 1 distributed the stock of Sub 4 and Sub 5 to Newco. When the term “Sub 1 Subsidiaries” is used with reference to the period following Date 7, the term “Sub 1 Subsidiaries” refers to Sub 3 and Sub 6.

On Date 9, Intermediate transferred certain assets to Newco in exchange for additional Newco stock in what is represented to be an exchange qualifying under section 351. Intermediate transferred the assets to Newco because additional working capital assets were needed for Newco’s Business A activities. As a result of this transaction, Intermediate came to own b% (a percentage more than 80%) of Newco stock, and Newco became a member of the Parent affiliated group.

Newco and Sub 7 were included in the Parent group’s consolidated federal income tax return for the period beginning the day after Date 9 and ending with the end of the group’s taxable year that included Date 9. Parent filed for a waiver to include Sub 7 under Rev. Proc. 91-71. Subs 1, 3, 4, 5, and 6 were not included in that tax return.

On Date 10, Sub 1 merged with Corporation Y in what is represented to be a reorganization as defined in section 368(a)(1)(A). Corporation Y survived the merger. The merger is represented to have been a reverse acquisition as defined in Treas. Reg. § 1.1502-75(d)(3). Following the merger, Newco owned c% (i.e. less than 80%), directly and indirectly, of Corporation Y’s common stock, its only outstanding stock. The former shareholders of Corporation Y owned the remaining Corporation Y stock.

On Date 11, Sub 4 merged into Sub 5 in what is represented to have been a reorganization as defined in section 368(a)(1)(A) of the Code.

On Date 12, Newco acquired additional Corporation Y stock pursuant to a settlement of a lawsuit filed by former shareholders of Corporation Y. Following that acquisition, Newco owned d% (i.e., more than 80%), directly and indirectly, of the outstanding Corporation Y stock. Parent included Corporation Y and its subsidiaries (including Sub 3, Sub 5, and Sub 6) as members of its consolidated group in the Parent group’s consolidated federal income tax return for the year including Date 12 in anticipation of receipt of this waiver.

Parent has represented that the disaffiliation of Sub 1 and the Sub 1 Subsidiaries on Date 10 and the reaffiliation of Corporation Y (successor to Sub 1) and the Sub 1 Subsidiaries on Date 12 will not provide a benefit of a reduction of 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 reconsolidation not occurred, including, but not limited to, the use of a net operating loss or credit that would have otherwise expired.

Section 1504(a)(3)(A) of the Code 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 which includes any period after December 31, 1984, with respect to periods after such cessation, such corporation (and 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.

Rev. Proc. 91-71, 1991-2 C.B. 900, grants a waiver of the general rule of § 1504(a)(3)(A) of the Code for taxpayers that meet its requirements. If a taxpayer qualifies for the waiver under Rev. Proc. 91-71, the procedure described therein is the exclusive procedure available for obtaining a waiver of the rule contained in § 1504(a)(3)(A). The waiver in Rev. Proc. 91-71 generally applies to any corporation that ceased to be a member of a group and rejoined the same group (i.e., the group remained in existence within the meaning of § 1.1502-75 of the Income Tax Regulations). In the case of the Date 10 disaffiliation and Date 12 reaffiliation, the waiver in Rev. Proc. 91-71 does not apply because Corporation Y was never a member of the Parent Group. Corporation Y is subject to § 1504(a)(3)(A) of the Code if it is a successor to Sub 1.

Based on the information submitted and representations made, it is concluded that:

Application of § 1504(a)(3)(A) of the Code is hereby waived under § 1504(a)(3)(B) with respect to the disaffiliation of Sub 1 and the Sub 1 Subsidiaries on Date 10 and reaffiliation of corporation Y (Successor to Sub 1) and the Sub 1 Subsidiaries on Date 12. Provided that Corporation Y and the Sub 1 Subsidiaries and the other members of the Parent group constitute an affiliated group of corporations within the meaning of § 1504(a), Corporation Y and the Sub 1 Subsidiaries may join in the filing of the Parent group's consolidated federal income tax return beginning with the day after Date 12 and for subsequent years.

No opinion is expressed about the tax treatment of the transaction under any other provisions of the Code and regulations or about the tax treatment of any conditions existing at the time of, or effects resulting from, the transaction that are not specifically covered by the above ruling. Specifically, no opinion has been requested and none is expressed as to whether any of the transactions described above represented by the taxpayer to qualify under sections 351 or 368(a)(1)(A) of the Code do so qualify.

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 § 12.04 of Rev. Proc. 99-1, 1999-1 I.R.B. 6. However, when the criteria in § 12.05 of the Rev. Proc. are satisfied, a ruling is not revoked or modified retroactively, except in rare or unusual circumstances.

This ruling is directed only to the taxpayers who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter should be attached to the consolidated federal income tax return of the taxpayers involved for the taxable year including the day after Date 12.

Sincerely yours,
Assistant Chief Counsel (Corporate)
By: Edward S. Cohen
Chief, Branch 2