

Internal Revenue Service

Department of the Treasury

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Person to Contact:

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Refer Reply To:

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Date:

February 14, 2000

Re:

LEGEND

Distributing =

Parent =

Subsidiary 1 =

Subsidiary 2 =

Subsidiary 3 =

Subsidiary 4 =

Subsidiary 5 =

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Subsidiary 6 =

Subsidiary 7 =

Date 1 =

Date 2 =

Date 3 =

Dear :

This letter responds to your October 13, 1999, request asking us to treat Subsidiaries 1 through 7 (the Subsidiaries) as having joined in the making of the consolidated return filed by the Parent for taxable year ending on Date 1. Additional information was submitted by letter on November 19, 1999. The information submitted in the request and in later correspondence is summarized below.

Parent is a domestic corporation and common parent of an affiliated group of corporations. Parent was spun off on Date 2 by Distributing to its shareholders. The Subsidiaries were wholly owned subsidiaries of Parent both before and after the spin off. Prior to the spin off, Parent and the Subsidiaries were included in the consolidated federal income tax return of Distributing with a taxable year ending Date 2. After the spin off, Parent and the Subsidiaries operated as an affiliated group with a taxable year ending Date 1. Parent and the Subsidiaries all use the accrual method of accounting and a 52/53 week tax year.

A consolidated federal income tax return was prepared for the taxpayers and was timely filed by the affiliated group on Date 3. Although a Form 851 (Affiliations Schedule) listing each subsidiary was filed with the consolidated federal income tax return, no Forms 1122 (Authorization and Consent of Subsidiary Corporation to be Included in a Consolidated Income Tax Return) were executed by the Subsidiaries or filed with the return.

The taxpayer has made the following representations regarding its request for relief:

- (a) The consolidated federal income tax return for the taxable year ending

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Date 1 included each of the subsidiary's income and deductions.

- (b) None of the subsidiaries filed a separate income tax return for the same taxable year.
- (c) Each of the Subsidiaries was included on the Form 851 that was attached to the consolidated return filed by Parent.
- (b) It was the intention of the taxpayers to operate as an affiliated group since the spin off and to file a consolidated federal income tax return.

Section 1.1502-75(b)(1) of the regulations provides that 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 the regulations.

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 joined in the making of a consolidated return by such group. The circumstances that the Commissioner will take into account in making this determination include the following:

- (i) Whether or not the income and deductions of the member were included in the consolidated return;
- (ii) Whether or not a separate return was filed by the member for that taxable year; and
- (iii) Whether or not the member was included in the affiliations schedule, Form 851.

Based on the information submitted and representations made, we hold 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 Subsidiaries with the consolidated return for the taxable year ending Date 1. Thus, each of the Subsidiaries joined in the making of the group's consolidated return for the taxable year ending on Date 1 (section 1.1502-75(b)(2) of the regulations).

No opinion is expressed as to the tax treatment of the above situation under other provisions of the Internal Revenue Code or regulations, or the tax treatment of any conditions existing at the time of, or effects resulting from, the above situation that are not specifically covered by the above rulings.

This ruling is directed only to the taxpayer(s) requesting it. Section 6110(k)(3) of

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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 year ending Date 1 was filed.

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

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,

Assistant Chief Counsel (Corporate)

By: Charles Whedbee
Charles Whedbee
Senior Technician Reviewer