

## 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:

, ID No.

Telephone Number:

Refer Reply To:

CC:CORP:BO2

PLR-136840-04

Date:

August 26, 2004

### Legend

Parent =

Subsidiary 1 =

Subsidiary 2 =

Subsidiary 3 =

Subsidiary 4 =

Subsidiary 5 =

Subsidiary 6 =

Subsidiary 7 =

Subsidiary 8 =

Subsidiary 9 =

Subsidiary 10 =

Parent's Incorporator =

Tax Preparer A =

Tax Preparer B =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Date 7 =

Date 8 =

Dear :

This letter is in response to your authorized representative's letter dated July 7, 2004, requesting that the Commissioner make a determination, under § 1.1502-75(b)(2) of the Income Tax Regulations (the "Regulations"), that Subsidiary 1 through Subsidiary 10 ("Subsidiaries") have joined in the making of the initial consolidated return filed by Parent for the short period ending Date 3. Additional information was received in a letter dated August 3, 2004. The material information submitted is summarized below.

#### SUMMARY OF FACTS

Parent is a calendar year taxpayer that uses the accrual method of accounting.

Subsidiaries, wholly-owned subsidiaries of Parent, also are calendar year taxpayers that use the accrual method of accounting.

For the short period ending Date 3, Parent and Subsidiaries reported their income and expenses on a consolidated return, Form 1120. The tax return was filed on a timely basis. However, although the consolidated return filed by Parent included a Form 851 containing the names of Subsidiaries, it did not include their respective Forms 1122 (Authorization and Consent of Subsidiary Corporation to be Included in Consolidated Income Tax Return).

### REPRESENTATIONS

Parent has made the following representations:

- (1) For the periods from Date 2 through Date 3, from Date 4 through Date 5, and from Date 6 through Date 7, Parent and Subsidiaries reported their income and expenses on a consolidated Form 1120, U.S. Corporation Income Tax Return. Such tax returns were filed on a timely basis.
- (2) Forms 1122 were omitted from Parent's initial consolidated return for the short period ending Date 3 due to an unintentional oversight on the part of Tax Preparer A and Tax Preparer B.
- (3) For the short period ending Date 3 and the calendar years ending Date 5 and Date 7 the following has occurred:
  - a. The income and deductions of Parent and Subsidiaries were included in Parent's initial consolidated return for the short period ending Date 3 and subsequent consolidated federal income tax returns;
  - b. Subsidiaries did not file separate returns for the short period ending Date 3 or for subsequent taxable years through and including the taxable year ending Date 7; and
  - c. Subsidiaries were included on the Form 851, Affiliations Schedule, that was attached to the consolidated return filed by Parent for the taxable years ending Date 3, Date 5, and Date 7.
- (4) The statute of limitations has not expired with respect to the consolidated returns filed by Parent for the periods ending Date 3, Date 5, and Date 7.

### APPLICABLE LAW

Section 1.1502-75(a)(1) of the 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 being filed

consents, pursuant to § 1.1502-75(b) of the Regulations, to the regulations issued under section 1502 of the Internal Revenue Code (the “Code”).

Section 1.1502-75(b)(1) of the Regulations provides that consent to the filing of a consolidated return is made by a member of an affiliated group that “joins” in the making of a consolidated return. This subsection of the regulations then provides that a corporation shall be deemed to have joined in the making of a consolidated return if it files a Form 1122 (Authorization and Consent of Subsidiary Corporation to be Included in Consolidated Income Tax Return) in the manner set forth in § 1.1502-75(h)(2) of the Regulations.

If, however, a member has failed to file a Form 1122 in the manner set forth in § 1.1502-75(h)(2) of the Regulations, it may attempt to rely upon § 1.1502-75(b)(2) of the Regulations in order to satisfy the requirement of § 1.1502-75(a)(1) of the Regulations that it consent to the regulations issued under section 1502 of the Code. Section 1.1502-75(b)(2) of the Regulations states that the Commissioner may determine, under the facts and circumstances of a case, that a member of an affiliated group has joined in the making of a consolidated return by the group. The circumstances, among others, that the Commissioner will take into account in making this determination include the following:

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

If the Commissioner determines under § 1.1502-75(b)(2) of the Regulations that a member has joined in the making of a consolidated return, the member will be treated as if it had filed a Form 1122 for the year for which the consolidated return was filed for purposes of § 1.1502-75(h)(2) of the Regulations.

#### RULING

Based on the information submitted and the representations made, it is held that Subsidiaries have joined in the making of the consolidated return filed by Parent for the taxable period ending Date 3. Subsidiaries will, therefore, be treated as if they had filed Forms 1122 for purposes of § 1.1502-75(h)(2) of the Regulations.

#### PROCEDURAL STATEMENTS AND CAVEATS

No opinion is expressed about the tax treatment of this case under any other provision of the Code or Regulations, or 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 rulings. In particular, no opinion is given regarding Parent's exclusion from the consolidated return of Parent's Incorporator during the period from Date 1 through Date 8.

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

A copy of this letter should be forwarded to the Service Center with which the subject group's consolidated Federal income tax return was 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 predicated upon the facts and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. This office has not verified any of the materials submitted in support of the request for a ruling. Verification of the information, representations, and other data may be required as part of the audit process.

Sincerely,

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Jeffrey B. Fienberg  
Assistant to the Branch Chief, Branch 2  
Office of Associate Chief Counsel  
(Corporate)