

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:

, ID No.

Telephone Number:

Refer Reply To:

CC:CORP:B06

PLR-111322-05

Date:

June 22, 2005

Legend

Parent =

Sub 1 =

Sub 2 =

Date A =

Date B =

Firm X =

Dear :

This letter responds to your authorized representative's letter dated February 28, 2005, requesting that the Commissioner make a determination that Parent filed an initial consolidated return for the short period beginning on Date A and ending on Date B with its subsidiaries for that year. A request that the Commissioner grant an extension of time for the Parent consolidated group to obtain a waiver of the application of § 1504(a)(3)(A) was submitted in a letter dated March 10, 2005. That request will be

responded to in a separate letter under control number PLR-114185-05. For purposes of this ruling, we will assume that the Commissioner will grant an extension of time and that the taxpayer will obtain such waiver. This letter is predicated upon such assumptions.

Parent is a domestic corporation. For the tax year ending Date B, Parent owned all of the stock of Sub 1 and Sub 1 owned all of the stock of Sub 2. On Date B, Sub 2 liquidated into Sub 1.

Parent, acting as the agent for Sub 1 and Sub 2, filed the initial consolidated Federal income tax return with subsidiaries Sub 1 and Sub 2 for the short tax period ending Date B. The Parent's consolidated return included the income and deductions of Sub 1 and Sub 2 from Date A through and including Date B. The consolidated Federal income tax return was timely filed. Firm X prepared this return.

Sub 1 and Sub 2 were properly included on the Form 851, Affiliations Schedule, filed with the Form 1120 for the tax year ending Date B. However, Parent, in filing the consolidated tax return for the initial tax year ending Date B, inadvertently omitted the required Forms 1122 ("Authorization and Consent of Subsidiary Corporation to be Included in a Consolidated Tax Return") for Sub 1 and Sub 2. Firm X, on behalf of Parent, has requested a ruling with respect to Parent's omission to file Forms 1122.

Representations

The taxpayer has made the following representations:

- (1) Parent and the Sub 1 and Sub 2 subsidiaries were affiliated for purposes of I.R.C. § 1504(a) for the period from Date A to Date B.
- (2) For the period from Date A to Date B, Parent and its subsidiaries reported all of their income and expenses on a timely filed consolidated return, and none of their items were reported in separate returns.
- (3) All of the affiliated subsidiaries of Parent were included on the Form 851 ("Affiliations Schedule") attached to the consolidated return filed by Parent for the year beginning on Date A and ending on Date B.
- (4) Had the Parent's consolidated return been properly filed for the period from Date A to Date B, no change in Federal income tax liability would have occurred relative to the liability stated in the consolidated return actually filed.

Analysis

Section 1.1502-75(a)(1) of the Income Tax 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 to be filed consents, in accordance with section 1.1502-75(b), to the regulations issued under section 1502.

Section 1.1502-75(a)(2) provides that a group which filed (or was required to file) a consolidated return for the immediately preceding taxable year is required to file a consolidated return for the taxable year, unless it has been granted permission by the Commissioner to discontinue filing consolidated returns.

With regard to the consent of a corporation for a group's first consolidated year, section 1.1502-75(b)(1) provides, as a general rule, that the 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 section 1.1502-75(h)(2).

Section 1.1502-75(h)(2) provides that a Form 1122 must be executed by each subsidiary and attached to the consolidated return for that first taxable year of the group (The rules for properly executing Forms 1122 and attaching them to a consolidated return are now in Temp. Reg. section 1.1502-75T(h)(2)). These provisions also provide that a Form 1122 shall not be required for a taxable year if a consolidated return was filed (or was required to be filed) by the group for the immediately preceding taxable year.

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

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

Where the Commissioner under the facts and circumstances determines that the member has joined in the making of a consolidated return, such member will be treated

for purposes of Treas. Reg. § 1.1502-75(h)(2) as if it had filed a Form 1122 for such year. Treas. Reg. § 1.1502-75(b)(2) flush language.

Based on the information and representations made, each member of the group has satisfied each of the above factors for the group's first taxable year ending on Date B, and, therefore, each member is determined to have joined in the making of a consolidated return for that taxable year.

Ruling

Based on the information submitted and representations made, we rule that Sub 1 and Sub 2 are treated under Treas. Reg. § 1.1502-75(h)(2) as if they filed Forms 1122 with the consolidated tax return of the Parent consolidated group for the taxable year ending Date B.

Caveats

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 (the Parent and its affiliated subsidiaries) requesting it. Section 6110(k)(3) of 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 return for the tax year ending Date B 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 ruling contained in this letter is 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,

George R. Johnson
Acting Assistant to the Branch Chief, Branch 6
Office of Associate Chief Counsel
(Corporate)