

## 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:01

PLR-120564-10

Date:

September 15, 2010

## LEGEND

Old Parent =

New Parent =

Foreign Corporation =

Sub 1 =

Sub 2 =

Sub 3 =

Sub 4 =

PLR-120564-10

2

Sub 5 =

Sub 6 =

Sub 7 =

Sub 8 =

Sub 9 =

Sub 10 =

Sub 11 =

Sub 12 =

LLC 1 =

LLC 2 =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Date 7 =

Date 8 =

Accounting Firm =

Corporate Officer =

Dear :

This letter responds to your letter, dated May 10, 2010, as submitted by your authorized representatives on behalf of New Parent, requesting a ruling, under Treas. Reg. §1.1502-75(b), that Subs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12 and LLCs 1 and 2 have joined in the making of the initial consolidated return filed by New Parent for the taxable year ending Date 6. The information submitted in that letter and in subsequent correspondence is summarized below.

The rulings contained in this letter are based upon information and representations submitted by New Parent and accompanied by a penalty of perjury statement executed by an appropriate party. This office has not verified any of the material submitted in support of New Parent's ruling request. Verification of information, representations, and other data may be required as part of the audit process.

## **SUMMARY OF FACTS**

Prior to Date 1, Old Parent was wholly owned by Foreign Corporation. On Date 1, an unrelated buyer acquired substantially all of the outstanding stock of Foreign Corporation. As part of the Foreign Corporation's acquisition on Date 2, Old Parent transferred substantially all of its assets to New Parent pursuant to a transaction intended to qualify as a reorganization within the meaning of section 368(a)(1)(D). The transfer of assets from Old Parent to New Parent did not qualify as any of the transactions described in Treas. Reg. §1.1502-75(d). Consequently, following this transfer, Old Parent properly and timely filed its pre-merger short period consolidated income tax return for the period of Date 3 through Date 4. New Parent timely filed its

post-merger short period consolidated income tax return for the period of Date 5 through Date 6.

New Parent engaged a paid preparer to prepare New Parent's short period consolidated income tax return for the period of Date 5 through Date 6. On this return, the preparer identified Subs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12 and LLCs 1 and 2 on Form 851, Affiliations Schedule, as subsidiaries affiliated with New Parent. The preparer also included the income and deductions associated with Subs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12 and LLCs 1 and 2 on New Parent's consolidated return for the taxable year ending on Date 6. New Parent, however, did not include Forms 1122, Authorization and Consent of Subsidiary Corporation To Be Included in a Consolidated Income Tax Return, for any of Subs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12 or LLCs 1 and 2 with its consolidated income tax return for the period of Date 5 through Date 6.

On or around Date 7, New Parent received notification from Accounting Firm that the post-merger short period consolidated income tax return for the period ending Date 6 failed to include the required Forms 1122. An affidavit signed by Corporate Officer, who had principal responsibility for ensuring New Parent complied with U.S. tax law, states that the absence of timely filed Forms 1122 was an inadvertent error.

## **REPRESENTATIONS**

Where applicable, New Parent (or "Taxpayer") and Subs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12 and LLCs 1 and 2 have made the following representations:

- (1) For each of the short taxable years ending Date 6, the full taxable year ending Date 8, and each taxable year thereafter, Taxpayer and each of Subs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12 and LLCs 1 and 2 reported their income and expenses on a timely filed consolidated Form 1120, U.S. Corporation Income Tax Return, filed by Taxpayer as the parent of the consolidated group.
- (2) None of Subs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12 and LLCs 1 and 2 filed a separate return for the short taxable year ending Date 6, the full taxable year ending Date 8, or any taxable year thereafter.
- (3) Each of Subs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12 and LLCs 1 and 2 was included in Form 851, Affiliated Schedule, for the short taxable year ending Date 6, the full taxable year ending Date 8, and each taxable year thereafter.
- (4) The statute of limitations has not expired with respect to the consolidated returns filed by Taxpayer for the short taxable year ending Date 6, the full taxable year ending Date 8 or any taxable year thereafter.

(5) Forms 1122, Authorization and Consent of Subsidiary Corporation, were inadvertently omitted from Taxpayer's initial consolidated return for the short taxable year ending on Date 6.

## **APPLICABLE LAW**

Treas. Reg. §1.1502-75(a)(1) provides, in part, that an affiliated group of corporations that 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 that has been a member of the group during any part of the taxable year for which the consolidated return is to be filed consents to the regulations under section 1502, in accordance with Treas. Reg. §1.1502-75(b). If a group wishes to exercise its privilege of filing a consolidated return, such return must be filed not later than the last day prescribed by law (including extensions of time) for the filing of the common parent's tax return.

With regard to a corporation's consent for a group's first consolidated year, Treas. Reg. §1.1502-75(b)(1) provides, as a general rule, that the corporation's consent shall be made by such corporation joining in the making of the consolidated return for such year. A corporation shall be deemed to have joined in the making of such return if it files a Form 1122 in the manner specified in Treas. Reg. §1.1502-75(h)(2).

Treas. Reg. §1.1502-75(h)(2) provides that if a group wishes to file a consolidated return for a taxable year, a Form 1122 must be executed by each subsidiary. For taxable years relevant to this ruling request, the group must attach to the consolidated return for the taxable year either executed Forms 1122 or unsigned copies of the completed Forms 1122 (and retain the signed originals in its records in the manner required by Treas. Reg. §1.6001-1(e)). Form 1122 is not 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.

Treas. Reg. §1.1502-75(b)(2) provides that if a member of the group fails to file Form 1122, the Commissioner may under the facts and circumstances determine that such member nevertheless has joined in the making of a consolidated return by such group. Factors that the Commissioner will take into account in making this determination include: (i) whether or not the income and deductions of the member for such taxable year 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. If the Commissioner determines, under the facts and circumstances, that the member has joined in the making of the 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)(3) provides that if any member has failed to join in the making of a consolidated return under either Treas. Reg. §1.1502-75(b)(1) or (b)(2), then the tax liability of each member of the group shall be determined on the basis of separate returns unless the common parent corporation establishes to the Commissioner's satisfaction that the failure of such member to join in the making of the consolidated return was due to a mistake of law or fact, or due to inadvertence. In such case, such member shall be treated as if it had filed a Form 1122 for such year for purposes of Treas. Reg. §1.1502-75(h)(2), and thus joined in the making of the consolidated return for such year.

## **RULING**

Based solely on the information submitted and representations made, we rule that each of Subs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12 and LLCs 1 and 2 is treated, under Treas. Reg. §1.1502-75(h)(2), as if it had filed a Form 1122 with the Federal income tax return filed by New Parent for the taxable year ending on Date 6. Treas. Reg. §1.1502-75(b)(2).

## **PROCEDURAL STATEMENTS**

Except as expressly provided herein, no opinion is expressed or implied concerning the tax treatment of any other aspect of any transaction or item discussed or referenced in this letter, or about the tax treatment of any condition existing at the time of, or effects resulting from, any transaction or item that is not specifically covered by the above ruling. This includes that no opinion is expressed as to whether the transfer of assets from Old Parent to New Parent qualified as a tax-free reorganization pursuant to §368(a)(1)(D). Further, no opinion is expressed on whether New Parent's interest in the stock of Subs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12 and LLCs 1 and 2 met the requirements of section 1504(a)(2).

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

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

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

Sincerely,

Lisa A. Fuller  
Senior Counsel, Branch 1  
(Office of Associate Chief Counsel (Corporate))