

Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:

CC:DOM:CORP:1- PLR-113411-00

Date:

September 28, 2000

In Re:

Legend

Parent =

Subsidiaries =

State A =

We respond to your letter dated April 20, 2000, in which you requested that the Commissioner make a determination, under Section 1.1502-75(b)(2) of the Income Tax Regulations, that Subsidiaries have joined in the making of the initial consolidated return filed by Parent for the short period October 16, 1997 through December 31, 1997.

Parent is a calendar year taxpayer that uses the accrual method of accounting and was organized under the laws of State A.

Subsidiaries are calendar year taxpayers that use the accrual method of

accounting and are wholly owned by Parent.

For the short period October 16, 1997 through December 31, 1997, 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 any Forms 1122 (Authorization and Consent of Subsidiary Corporation to be Included in Consolidated Income Tax Return).

Parent has made the following representations:

- 1) For the short period October 16, 1997 through December 31, 1997, the calendar year ended December 31, 1998, and the short period ended January 22, 1999, the following has occurred:
 - i) The income and deductions of Parent and Subsidiaries were included in the Parent's group consolidated returns for 1997 and subsequent periods through and including January 22, 1999.
 - ii) The Subsidiaries did not file separate returns for 1997 or for subsequent taxable years through and including the taxable year ended January 22, 1999; and
 - iii) The Subsidiaries were included on Form 851, Affiliations Schedule, that was attached to the consolidated return filed by the group for the taxable years ending in 1997 and subsequent taxable years through and including the taxable year ended January 22, 1997. A copy of the Form 851 for each of the respective periods in which a consolidated return was filed by the Parent group has been submitted.
- 2) Forms 1122 were omitted from Parent's initial 1997 consolidated return due to an unintentional and apparent oversight on the part of its tax preparer (as confirmed by Parent's tax preparer under penalties of perjury).
- 3) The statute of limitations has not expired with respect to the consolidated returns filed by the Parent group for the periods ended December 31, 1997, December 31, 1998 and January 22, 1999.

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 being filed consents, pursuant to section 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) of the regulations sets forth several provisions that corporations may rely upon in order to satisfy the consent requirement set forth in section 1.1502-75(a)(1) of the regulations. 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 section 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 section 1.1502-75(h)(2) of the regulations, it may attempt to rely upon section 1.1502-75(b)(2) of the regulations in order to satisfy the requirement of section 1.1502-75(a)(1) 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 section 1.1502-75(b)(2) 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 section 1.1502-75(h)(2) of the regulations.

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 December 31, 1997. Subsidiaries will, therefore, be treated as if they had filed Forms 1122 for purposes of section 1.1502-75(h)(2) of the regulations.

No opinion is expressed as to the tax treatment of this case under 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 above stated facts that are not

directly covered by the above rulings.

This ruling is directed only to the taxpayer(s) 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 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 the taxpayer.

Sincerely,
Assistant Chief Counsel (Corporate)
By: Christopher Schoen
Assistant to the Chief
Branch 1