

Internal Revenue Service

Number: **200517024**

Release Date: 4/29/2005

Index Number: 1504.00-00

Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

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Refer Reply To:
CC:CORP:B04
PLR-149163-04

Date:
January 07, 2005

Legend

Target =

Sub 1 =

Sub 2 =

Sub 3 =

Sub 4 =

Sub 5 =

Sub 6 =

Sub 7 =

Sub 8 =

Sub 9 =

Sub 10 =

Sub 11 =

Sub 12 =

Sub 13 =

Sub 14 =

Sub 15 =

Sub 16 =

Sub 17 =

Sub 18 =

Sub 19 =

Sub 20 =

Sub 21 =

Sub 22 =

Sub 23 =

Sub 24 =

Sub 25 =

Sub 26 =

Sub 27 =

Sub 28 =

Sub 29 =

Acquiring =

Acquisition Sub =

Sub 30 =

Sub 31 =

Sub 32 =

Purchaser =

Date A =

Date B =

Date C =

Date D =

Date E =

Date F =

a =

b =

c =

d =

Dear :

This is in response to a letter dated September 15, 2004, requesting a ruling pursuant to § 1504(a)(3)(B) of the Internal Revenue Code that the Secretary waive the general rule set forth in § 1504(a)(3)(A). Additional information was received in letters dated November 2, 2004 and January 4, 2005.

The information submitted indicates that prior to Date A, Target was the common parent of an affiliated group of corporations that filed a consolidated return (the "Target Group") on a calendar year basis. The Target Group consisted of Target and Subs 1-29 (the "Historic Subsidiaries").

Acquiring is the common parent of another affiliated group that files a consolidated return (the "Acquiring Group"). On Date A, Acquisition Sub, a wholly owned subsidiary of Acquiring, acquired a percent of Target's outstanding common stock and all of Target's outstanding Series B preferred stock pursuant to a tender offer. Shortly thereafter, on Date B, Acquisition Sub merged with and into Target with Target surviving.

As a result of the Date A stock acquisition, the Target Group was terminated pursuant to Treas. Reg. § 1.1502-75(d)(1) and was required to join in the filing of the Acquiring Group's consolidated return pursuant to § 1501 and Treas. Reg. § 1.1502-76(b)(1). Beginning the day after Date A and for several years thereafter, Target and the Historic Subsidiaries joined with Acquiring and its subsidiaries in the filing of the Acquiring Group's consolidated return. During this period, a number of Target's Historic Subsidiaries ceased to be members of the Acquiring Group as follows: in separate transactions, Sub 5, Sub 10, Sub 26, and Sub 28 each merged with and into Target with Target surviving, and Sub 23 merged with and into Sub 24 with Sub 24 surviving; Sub 2, Sub 6, Sub 12, Sub 22, and Sub 27 each converted to a single-member limited liability company treated as a disregarded entity for federal income tax purposes. In addition,

Target represents that Sub 7 and Sub 8 were shell corporations formed by a third party that were not owned by Target and never engaged in business, and thus were erroneously included in the affiliations schedule filed by Target with its consolidated return. Also during this period, Sub 30, Sub 31, and Sub 32 became affiliated subsidiaries of Target (the “New Subsidiaries”).

For what are represented to be valid business reasons, on Date C the Acquiring Group disposed of its interest in Target through a sale of all the Target stock to Purchaser, an unrelated entity treated as a partnership for federal income tax purposes. As a result, Target the Historic Subsidiaries, and the New Subsidiaries ceased to be members of the Acquiring Group. Also on Date C, Sub 15 ceased to be a member of the affiliated group when group members’ ownership of Sub 15’s stock dropped below 80 percent as a result of a transfer intended to qualify under § 351. Subsequently, on Date D, Sub 4 merged with and into Target with Target surviving.

Target wishes to file a consolidated federal income tax return with its subsidiaries, including the Historic Subsidiaries, for the short period from Date E through Date F (the “Short Period”), and for subsequent taxable years. Because Target and the Historic Subsidiaries are outside the scope of Rev. Proc. 2002-32, 2002-1 C.B. 959, which grants an automatic waiver of § 1504(a)(3)(A) in certain circumstances, Target and the Historic Subsidiaries are seeking a waiver under §1504(a)(3)(B). In the interim, Target and its subsidiaries have timely filed a consolidated return for the Short Period without first receiving a waiver under § 1504(a)(3)(B).

Section 1504(a)(3)(A) provides that if a corporation is included in a consolidated federal income tax return filed by an affiliated group of corporations and such corporation ceases to be a member of such group, such corporation (or any successor of such corporation) may not be included in any consolidated return filed by the affiliated group (or by another affiliated group with the same common parent or a successor of such common parent) before the 61st month beginning after its first taxable year in which it ceased to be a member of such affiliated group. Thus, Target and its Historic Subsidiaries would be prevented from filing a consolidated return. However, § 1504(a)(3)(B) allows the Secretary to waive the application of § 1504(a)(3)(A) to any corporation for any period subject to such conditions as the Secretary may prescribe.

Section 1504(a)(3)(A) was enacted by section 60(a) of the Tax Reform Act of 1984. The Conference Report states that the rule prohibiting consolidation after deconsolidation was an anti-abuse rule. H.R. Conf. Rep. No. 98-861, at 833 (1984).

Rev. Proc. 2002-32 grants an automatic waiver of the general rule of § 1504(a)(3)(A) for taxpayers who meet its requirements. Section 5 of Rev. Proc. 2002-32 specifies the information and representations to be included in a request for an automatic waiver. Section 5.14 of Rev. Proc. 2002-32 provides that the request must include a representation that the disaffiliation and subsequent consolidation has not provided and will not provide a benefit of a reduction in income, increase in loss, or any

other deduction, credit, or allowance (a federal tax savings) that would not otherwise be secured or have been secured had the disaffiliation and subsequent consolidation not occurred, including, but not limited to, the use of a net operating loss or credit that would otherwise have expired, or the use of a loss recognized on a disposition of stock of the deconsolidated corporation or a predecessor of such corporation. Section 5.14 of Rev. Proc. 2002-32 further provides that in determining whether the disaffiliation and subsequent consolidation provided or will provide a federal tax savings, the net tax consequences to all parties, taking into account the time value of money, are considered.

Section 7 of Rev. Proc. 2002-32 provides that if a deconsolidated corporation cannot qualify for an automatic waiver, a waiver under § 1504(a)(3)(B) may only be obtained through a letter ruling request. Section 7 of Rev. Proc. 2002-32 further provides that the ruling request should include the information set forth in § 5 of Rev. Proc. 2002-32. Section 7 of Rev. Proc. 2002-32 further provides that, to the extent that the representations set forth in §§ 5.03 or 5.14 of Rev. Proc. 2002-32 cannot be made, the letter ruling request must: (1) contain information establishing that federal tax savings was not a purpose of the disaffiliation, and that the amount of any federal tax savings attributable to the disaffiliation or a subsequent consolidation is not significant; and (2) state whether the deconsolidated corporation or a predecessor of such corporation was, at any time during the period of disaffiliation, in the effective control of any member (or successor of any member) of the current group or the former group.

It is represented that except for obtaining a tax benefit in the form of the use of losses of the Acquiring Group to offset approximately \$b of taxable income of the Target Group during the period of their affiliation, the deconsolidation and reconsolidation of the Target Group has not provided and will not provide a benefit of a reduction in income, increase in loss, or any other deduction, credit, or allowance that would not otherwise be secured or have been secured had the disaffiliation and subsequent consolidation not occurred, including, but not limited to, the use of a net operating loss or credit that would have otherwise expired, or the use of a loss recognized on a disposition of stock of the deconsolidated corporation or a predecessor of such corporation.

In support of this representation, Target has submitted information indicating that Target took into account an excess loss account (as defined in Treas. Reg. § 1.1502-19) of \$c in Sub 14 and a substantial excess loss account of \$d in Sub 19 as a result of the Acquiring Group's sale of Target's stock to Purchaser on Date C. Moreover, under the facts presented it does not appear that the deconsolidation of the Target Group on Date A and the reconsolidation of Target with the Historic Subsidiaries on Date E were motivated by tax considerations because the deconsolidation and reconsolidation occurred largely or entirely as a result of actions undertaken by third parties.

Based solely on the information submitted and the representations set forth above, we rule that, pursuant to § 1504(a)(3)(B), the application of § 1504(a)(3)(A) is

waived. Provided that Target, the Historic Subsidiaries, and the New Subsidiaries constitute an affiliated group of corporations within the meaning of § 1504(a), Target, the Historic Subsidiaries, and the New Subsidiaries may file a consolidated federal income tax return for the Short Period and for subsequent tax years.

The ruling contained in this letter is based upon information and representations submitted by the taxpayer and accompanied by a penalties 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.

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 requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Sincerely,

Sean P. Duffley
Assistant to the Chief, Branch 4
Office of Associate Chief Counsel
(Corporate)