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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:B02

PLR-131480-08

Date:

November 21, 2008

Legend

Parent =

Sub 1 =

Sub 2 =

Sub 3 =

State A =

Accounting Firm =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Dear :

This letter responds to your July 14, 2008, letter requesting that the Commissioner make a determination under § 1.1502-75(b)(3) of the Income Tax Regulations (the "Regulations"), that Sub 1, Sub 2, and Sub 3 (collectively the "Subsidiary Corporations") have joined in the filing of a consolidated Federal income tax return filed by Parent for the taxable year ending on Date 3. The information submitted in that request and in later correspondence is summarized below.

FACTS

Parent is a State A corporation incorporated on Date 1; it is a calendar year taxpayer that uses the accrual method of accounting. Immediately after its formation, Parent formed a wholly-owned, transitory merger subsidiary specifically for the purpose of effectuating Parent's cash acquisition of 100% of the stock of Sub 1 from an unrelated party. Sub 1 was formerly the common parent of an affiliated group of corporations (the "Old Consolidated Group") that joined in the filing of a consolidated Federal income tax return. The Old Consolidated Group, comprised of the Subsidiary Corporations, was a calendar year taxpayer that used the accrual method of accounting.

On Date 2, a series of transactions resulted in Parent acquiring all of the outstanding shares of Sub 1 (the "Acquisition Transaction"). Sub 1 filed a short year, final tax return as the common parent of the Old Consolidated Group.

Parent retained Accounting Firm to prepare its consolidated Federal income tax return. Accounting Firm understood that that Parent and the Subsidiary Corporations intended to file a consolidated Federal income tax return for the taxable year ending on Date 3. Parent timely filed a Form 7004 (Application for Automatic Extension of Time to File Corporation Income Tax Return) on Date 4, a date prior to the due date of Parent's initial consolidated Federal income tax return.

Parent's Form 1120 was prepared by Accounting Firm, including a Form 851 (Affiliations Schedule) identifying and including Parent, Sub 2 and Sub 3, but inadvertently failing to include Sub 1. Additionally, Accounting Firm inadvertently failed to file any Forms 1122 (Authorization and Consent of Subsidiary Corporation to Be Included in a Consolidated Return). Parent's Form 1120 was timely filed on Date 5, a

date prior to the extended due date for the taxable year ending on Date 3. The statute of limitations under § 6501(a) of the Internal Revenue Code (the "Code") has not expired for tax returns filed for the taxable year ending on Date 3.

REPRESENTATIONS

Parent has made the following representations:

(1) Except for the failure to timely file Forms 1122, Parent, Sub 1, Sub 2, and Sub 3 were eligible to file a consolidated Federal income tax return, with Parent as the common parent, for the taxable year ending on Date 3.

(2) For the taxable year ending on Date 3, and for all taxable years thereafter, all of the income and deductions of Parent and each of the subsidiary corporations (for the portion of the taxable year during which each corporation was an affiliated corporation of Parent) were included in the Federal income tax return filed by Parent.

(3) None of the Subsidiary Corporations filed a separate income tax return for the taxable year ending on Date 3, or for any taxable year thereafter.

(4) Sub 2 and Sub 3 each was included on the Form 851 attached to Parent's return for the taxable year ending on Date 3 and for all taxable years thereafter.

APPLICABLE LAW

Section 1.1502-75(a)(1) of the Regulations provides, in part, that a group 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 during any part of the taxable year for which the consolidated return is to be filed consents, pursuant to § 1.1502-75(b), to the regulations issued under § 1502 of the Code. In order to exercise the privilege of filing a consolidated return, such return must be filed by an affiliated group not later than the last day prescribed by law, including extensions, for the filing of the common parent's tax return.

With regard to a group's first consolidated year, § 1.1502-75(b)(1) provides that a 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 a consolidated return if it files a Form 1122 in the manner specified in § 1.1502-75(h)(2).

Section 1.1502-75(h)(2) provides that if a group wishes to file a consolidated return, then a Form 1122 must be executed by each subsidiary. For taxable years relevant to this case, the group must attach to the consolidated return for the taxable year either the executed Forms 1122, or the unsigned copies of the completed Forms

1122 (and retain the signed originals in its records in the manner required by § 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 tax year.

Section 1.1502-75(h)(1) provides that the consolidated return shall be made on Form 1120 for the group by the common parent corporation. The consolidated return, with Form 851 attached, shall be filed with the district director with whom the common parent would have filed a separate return.

Section 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 has nevertheless joined in the making of a consolidated return by such group. The circumstances, among others, that will be taken into account in making this determination include: (i) whether or not the income and deductions of the member 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 presented, that the member has joined in the making of the consolidated return, such member shall be treated as if it had filed a Form 1122 for such year for purposes of § 1.1502-75(h)(2).

Section 1.1502-75(b)(3) provides that if any member has failed to join in the making of a consolidated return under either §§ 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 § 1.1502-75(h)(2), and thus joined in the making of the consolidated year for such year.

RULING

Based solely on the information submitted and representations made, we rule that for purposes of § 1.1502-75(h)(2), Sub 1, Sub 2 and Sub 3 each shall be treated as if it had filed a Form 1122 with Parent's consolidated Federal income tax return for the taxable year ending on Date 3, and thus joined in the making of the consolidated return for such year (§ 1.1502-75(b)(3)).

Within 45 days of the date of this letter, Parent shall file amended returns for the initial short tax year, and all subsequent years necessary, to include Sub 1 on Parent's Form 851.

CAVEATS

No opinion is expressed or implied about 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.

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. This office has not verified any of the materials submitted in support of the taxpayer's ruling request. Verification of this material may be required as part of the audit process.

PROCEDURAL STATEMENTS

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 ruling letter must be attached to each Federal income tax return to which it is relevant. Alternatively, if Parent files its returns electronically, this requirement may be satisfied by attaching a statement to the return that provides the date and the control number of this letter ruling.

In accordance with the power of attorney on file in this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Alison G. Burns
Branch Chief, Branch 2
Office of Associate Chief Counsel (Corporate)

cc: