

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

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November 20, 2012

LEGEND

Parent =

LLC 1 =

LLC 2 =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Date 7 =

Year 1 =

Dear \_\_\_\_\_ :

This is in response to a letter dated August 23, 2012, submitted on behalf of Parent, requesting a ruling that the Commissioner determine under § 1.1502-75(b)(2) of the Income Tax Regulations that LLC 2 joined in the making of a consolidated return filed by Parent for the taxable year ending Date 2. Additional information was received in a letter dated September 19, 2012. The material information submitted for consideration is summarized below.

#### SUMMARY OF FACTS

Parent was incorporated on Date 1. LLC 1 was organized on Date 1. LLC 1 is an entity disregarded as separate from its owner for Federal tax purposes. LLC 2 was organized on Date 1. On Date 1, LLC 2 was an entity disregarded as separate from its owner for Federal tax purposes. On Date 4, LLC 2 filed a private letter ruling request, requesting an extension of time to file an election to be treated as an association taxable as a corporation effective as of Date 1 ("Entity Classification Election"). This extension request was granted in a letter ruling dated Date 6 and the Entity Classification Election was filed on Date 7.

Parent owns all the outstanding member interests of LLC 1. LLC 1 owns all the outstanding member interests of LLC 2. LLC 2 owns all of the outstanding stock of numerous corporations which, together with LLC 2 and Parent, comprise the "Parent Affiliated Group", of which Parent is the common parent.

The Parent Affiliated Group timely filed the Year 1 Consolidated Return, and a properly executed Form 1122, Authorization and Consent of Subsidiary Corporation To Be Included in a Consolidated Income Tax Return, was included in this return for each subsidiary member of the Parent Affiliated Group, other than LLC 2. At the time this return was filed, LLC 2 had not filed the Entity Classification Election. Accordingly, consistent with the treatment of LLC 2 as an entity disregarded as separate from its owner for Federal tax purposes, LLC 2 did not join in the election to file a consolidated return or file a separate return for the taxable year ending Date 2. Also, LLC 2 was not included on the Form 851, Affiliations Schedule, attached to the Year 1 Consolidated Return. However, the assets, liabilities, and items of income, gain, deduction, loss and credit of LLC 2 were included in the Year 1 Consolidated Return, as those of Parent.

#### REPRESENTATIONS

1. Except for LLC 2's failure to timely file Form 1122, the Parent Affiliated Group was eligible to file a consolidated Federal income tax return for the initial taxable year ending Date 2.
2. The income and deductions of each member of the Parent Affiliated Group, including LLC 2, were included in the timely filed consolidated Federal income tax return for the initial taxable year ending Date 2.
3. Neither Parent nor LLC 2 filed a separate Federal income tax return for the taxable year ending Date 2. In addition, no other member of the Parent Affiliated Group filed a separate Federal income tax return for the taxable year ending Date 2.
4. Except for LLC 2, all members of the Parent Affiliated Group were included on Parent's Form 851, Affiliations Schedule, for the taxable year ended Date 2, filed with the initial Year 1 Consolidated Return.
5. All members of the Parent Affiliated Group, including LLC 2, were included on Parent's Form 851, Affiliations Schedule, for the taxable years ended Date 3 and Date 5, filed with the timely filed Forms 1120, U.S. Corporation Income Tax Return, for the Parent Affiliated Group.

#### APPLICABLE LAW

Section 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 § 1502, in accordance with § 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, § 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 § 1.1502-75(h)(2).

Section 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 the taxable year 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 § 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.

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 joined in the making of a consolidated return by such group. The following circumstances, among others, will be taken into account in making this determination:

(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) for such taxable year. If the Commissioner determines 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).

Based solely on the information submitted and the representations made, we rule that for purposes of § 1.1502-75(h)(2), LLC 2 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 2, and thus shall be treated as having joined in the making of the consolidated return for such year. Section 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.

The ruling contained in this letter is based upon facts 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 the information, representations, and other data may be required as part of the audit process.

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

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

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

Sincerely,

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Leah M. Thompson  
Assistant to the Branch Chief, Branch 1  
Office of Associate Chief Counsel (Corporate)