

**Internal Revenue Service
Large Business & International
Western Compliance Practice Area**

Department of the Treasury
Washington, DC 20224

**Third Party Communication:
Date of Communication:**

Number: **202310014**
Release Date: 3/10/2023

Person To Contact:

Telephone Number:

In Re: Holding Company

Date:
12-13-2022

UIL: 1502.00-00

Legend:

Predecessor Entity =

Holding Company =

Date 1 =

Date 2 =

Business 1 =

Date 3 =

Date 4 =

Sub 1 =

Sub 2 =

Sub 3 =

Sub 4 =

Sub 5 =

Sub 6 =

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Sub 7 =

Sub 8 =

Sub 9 =

Date 5 =

Sub 10 =

Date 6 =

Sub 11 =

Date 8 =

Date 9 =

Date 10 =

Date 11 =

Date 12 =

Return Preparer =

Accounting Firm =

Dear Taxpayer:

Predecessor Entity was formed on **Date 1**. On **Date 2**, it changed its name to **Holding Company**. **Holding Company's** subsidiaries are in the business of **Business 1**.

Effective **Date 3**, **Holding Company** "checked the box" to become a corporation. **Date 4**, **Holding Company** owned 100% of the membership interests in two LLCs:

- (i) **Sub 1**, which in turn owned 100% of the membership interests in a disregarded entity, **Sub 2**, which in turn owned 100% of the membership interests in **Sub 3**.
- (ii) **Sub 4**, which in turn owned 100% of the membership interests in three LLCs:
 - (a) **Sub 5**
 - (b) **Sub 6**, which in turn owned 100% of the membership interests **Sub 7**; and
 - (c) **Sub 8**, which in turn owned 100% of the membership interests in **Sub 9**.

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On **Date 5**, **Holding Company** acquired 100% of the membership interests in **Sub 10**. The latter company was dissolved on **Date 6**. All other entities continue to be owned as described above. The corporations named above also owned a variety of other entity interests, directly or through disregarded entities. These are not material to this request, as the affiliated group does not own stock in these entities meeting IRC 1504(a). For example, **Sub 10**, is taxed as a corporation, but 37.5% of its membership interests are held by parties unrelated to **Holding Company**.

On **Date 7**, **Holding Company** timely filed Form 1120 for its initial short tax year **Date 3** through **Date 8**. This was a consolidated return. It included Form 851, "Affiliation Schedule," identifying the following seven subsidiary corporations. These seven subsidiaries also provided Form 1122, "Authorization and Consent of Subsidiary Corporation To Be Included in a Consolidated Income Tax Return".

- a. **Sub 10**
- b. **Sub 5**
- c. **Sub 7**
- d. **Sub 9**
- e. **Sub 4**
- f. **Sub 6**
- g. **Sub 8**

On **Date 9**, **Sub 1** timely filed its initial Form 1120, as a separate return, for the period beginning **Date 3** (i.e. the effective date of its check-the-box election) and ending **Date 8**.

On **Date 10**, **Sub 3** timely filed Form 1120, as a separate return, for the period beginning **Date 11** and ending **Date 8**. The returns described above were signed by **Return Preparer**, a principal at **Accounting Firm**. According to the declaration of **Return Preparer**, the returns were prepared by herself and by other employees of her accounting firm.

According to **Return Preparer**, the decision to file separate returns for **Sub 1** and **Sub 3** was made in the belief that, under the laws as applied to these facts, **Holding Company** could file a consolidated return that did not include all members in its affiliated group, and that **Sub 1** and **Sub 3** could instead file separate returns. According to **Return Preparer**, immediately after discovering the mistake, this determination request was prepared to correct the omission.

ISSUES

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Taxpayer's determination letter request includes requests for the following rulings:

(1) **Holding Company** has established to the satisfaction of the Commissioner that because of a mistake of law **Sub 1** and **Sub 3** were omitted from its consolidated federal income tax return.

(2) **Sub 1** and **Sub 3** shall be treated as if they had filed a Form 1122 for the taxable year ended **Date 8** for purposes of section 1.1502-75(h)(2), and thus joined in the making of the consolidated return for such year. (Treas. Reg. 1.1502-75(b)(3)).

(3) **Holding Company** will file an amended consolidated income tax return for the year ended **Date 8** to include the income and deductions of **Sub 1** and **Sub 3** (Treas. Reg. 1.1502-76(b)(1)).

(4) **Sub 3** will file an amended separate tax return for the period **Date 11** to **Date 4**. It will be included in the consolidated return of **Holding Company** beginning **Date 3** to **Date 8**.

ANALYSIS

Treas. Reg. § 1.1502-75(b)(3) states:

If any member has failed to join in the making of a consolidated return under either subparagraph (1) or (2) of this paragraph, 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 satisfaction of the Commissioner that the failure of such member to join in the making of the consolidated return was due to a mistake of law or facts, or to inadvertence. In such case, such member shall be treated as if it had filed a Form 1122 for such year for purposes of paragraph (h)(2) of this section regarding filing Form 1122 for the first year a group wishes to file a consolidated return, and thus joined in the making of the consolidated return for such year.

If the taxpayer can show **Sub 1** and **Sub 3** were omitted because of a mistake of law, then -75(b)(3) would allow the taxpayer to treat these subsidiaries as though they had filed a Form 1122 for the taxable year ended **Date 8**, of purposes of section 1.1502-75(h)(2) and would allow the taxpayer to file an amended return to include the subsidiaries on the amended consolidated return.

The facts of this case are similar to the facts of PLR 201726015. In that PLR, the parent corporation filed a consolidated return that included Subsidiary 2 but did not include Subsidiary 1, which instead filed a separate return. "The Taxpayer states that 'at the time of the preparation of the relevant returns, the return preparer mistakenly believed that the inclusion of Subsidiary 1 in the Consolidated Return was voluntary, not mandatory.'" This statement is substantially similar to the statement provided by **Return Preparer** that "those persons acted in the belief that, under the law as applied to these facts, **Holding Company** could file a consolidated return which did not include all the members in its affiliated group, and that the two omitted members, **Sub 1** and **Sub 3**, could instead file separate returns."¹

Before the Service can conclude whether to issue the determination letter, however, the request for a determination letter cannot fall into one of the circumstances under which determination letters are not issued by a Director under Section 6.14 of Revenue Procedure 2022-1. Specifically, a Director will not issue a determination letter if—

- (1) the taxpayer has directed a similar inquiry to an Associate office;
- (2) the same issue, involving the same taxpayer or a related party, is pending in a case in litigation or before Appeals;
- (3) the request involves an industry-wide problem;

¹ Determination Letter Request p. 13.

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(4) the specific employment tax question at issue in the request has been, or is being, considered by the Central Office of the Social Security Administration or the Board for the same taxpayer or a related party; or

(5) the request is for a determination of constructive sales price under § 4216(b) or § 4218(c), which deal with special provisions applicable to the manufacturers excise tax. The Associate Chief Counsel (Passthroughs and Special Industries) will, in certain circumstances, issue letter rulings in this area. See section 5.13 of this revenue procedure.

It is Counsel's understanding that none of the above circumstances exist. Even if the originally filed consolidated return and separate returns are currently under examination, the issue of whether the -75(b)(3) regulations should apply is not part of that examination.

CONCLUSION

As a result of the mistake of law on the part of the return preparer and because the subject of the determination letter request is not prohibited under Revenue Procedure 2022-1, Section 6.14, the -75(b)(3) regulations allow for the taxpayer's above referenced ruling requests.

CAVEATS

Except as expressly provided herein, no opinion is expressed or implied concerning the U.S. income tax consequences of any 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 determination.

The determination contained in this letter is based upon information and representations submitted by the taxpayers and accompanied by a penalty of perjury declaration executed by an appropriate party.

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PROCEDURAL MATTERS

This determination is directed only to the taxpayers who requested it. IRC § 6110(k)(3) provides that it may not be used or cited as precedent.

This office will associate a copy of this determination letter with the Parent's U.S. income tax returns. A copy of this determination letter should be kept in the Parent's permanent records.

A copy of this determination 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 returns that provides the date and control number of the determination letter

Sincerely,

By: **Peter C.
Rock**

Digitally signed by Peter C. Rock
Date: 2022.12.13 14:46:18 -08'00'

Title: Director, Field Operations - WCPA

Section 6110(k)(3) of the Internal Revenue Code
This document may not be used or cited as precedent.