



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, DC 20224

LARGE BUSINESS AND
INTERNATIONAL DIVISION

Internal Revenue Service

Release Number: 202428009
Release Date: 7/12/2024

Index Numbers 1501.00-00, 1502.75-00

Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person to Contact:
***, ID No. ***

Telephone:

Date: April 19., 2024

Legend

Taxpayer 1 (Parent) = ***
Taxpayer 2 (Sub 1) = ***
Taxpayer 3 (Sub 2) = ***
Taxpayer 4 (Sub 3) = ***
Taxpayer 5 (Sub 4) = ***

Date 1 = ***
Date 2 = ***
Date 3 = ***
Date 4 = ***
Date 5 = ***
Date 6 = ***
Date 7 = ***
Date 8 = ***
Date 9 = ***
Date 10 = ***
Date 11 = ***

Dear ***:

This letter responds to letters dated Date 1 and Date 2 submitted on behalf of Parent, Sub 1, Sub 2, Sub 3, and Sub 4 (collectively, the "Parent Group," with respect to the years of Sub 1's, Sub 2's, Sub 3's, and Sub 4's existence), requesting that the Commissioner make a determination regarding the following: (1) The failure of Parent's wholly owned subsidiary Sub 3 to have consented to the filing of a consolidated return with Parent pursuant to, and in the manner provided by Treas. Reg. §§ 1.1502-75(a)(1),

1.1502-75(b)(1) and 1.1502-75(h)(2) for the tax year ended Date 3; (2) the failure of Parent's wholly owned subsidiary Sub 4 to have consented to the filing of a consolidated return with Parent pursuant to, and in the manner provided by, Treas. Reg. §§ 1.1502-75(a)(1), 1.1502-75(b)(1) and 1.1502-75(h)(2) for the tax year ended Date 3.

The determination contained in this letter is based upon facts and representations submitted by the Parent Group and accompanied by a penalties of perjury statement executed by an appropriate party. This office has not verified any of the material submitted in support of the request for this determination letter.

SUMMARY OF FACTS

Parent was incorporated on Date 4, and Sub 1 and Sub 2 were incorporated as wholly owned subsidiaries of Parent on Date 4. For the entire time that Sub 1 and Sub 2 have been in existence, Parent has been the sole shareholder, and in sole control, of each of Sub 1 and Sub 2. Sub 3 and Sub 4 were formed as limited liability companies and made an initial entity classification election on Date 5 to be treated as associations taxable as corporations for U.S. federal income tax purposes. On Date 6, Sub 2 purchased from unrelated persons the stock of Sub 3 and Sub 4. On Date 8, Sub 3 merged with and into Sub 4, with Sub 4 surviving. On Date 10, Sub 4 elected to be disregarded as a separate entity, effective on Date 11. Since Date 6, Parent has been the sole shareholder, and in sole control, of each of Sub 3 and Sub 4.

Following these transaction steps, Parent Group mistakenly believed that Sub 3 and Sub 4 became members of the consolidated group on Date 8, that Sub 4 immediately and subsequently liquidated into Sub 2, and that the activity of Sub 3 and Sub 4 should be included in Sub 2 starting from the day following completion of all transaction steps.

Accordingly, Parent Group's consolidated return for the tax year ended Date 3: (1) Did not include items of income, gain, deductions, or loss for either Sub 3 or Sub 4 for the period of Date 7 through Date 8, and (2) did not include Forms 1122, Authorization and Consent of Subsidiary Corporation to be Included in a Consolidated Tax Return, for Sub 3 and Sub 4. In addition, Form 851, Affiliations Schedule, did not reflect Sub 3 and Sub 4.

Parent Group's consolidated return for the tax year ended Date 3 did, however, include Sub 1 and Sub 2 on its Form 851 Affiliations Schedule and Forms 1122 Authorization and Consent of Subsidiary for Sub 1 and Sub 2. Additionally, the "consolidated return" box on the face of the return was checked.

Sub 1 and Sub 2 have never filed a separate U.S. income tax return for any tax year. Sub 3 and Sub 4 filed separate returns from their formation on Date 5, including short year, final returns for the period beginning Date 9 and ending Date 6, and did not file separate returns thereafter.

Parent Group's consolidated return for the tax year ended Date 3 contained all the income, deductions, assets, and liabilities of Sub 1 and Sub 2. Parent's consolidated return for the tax year ended Date 3 further contained all the income, deductions, assets, and liabilities of Sub 3 and Sub 4 for the period between Date 11 and Date 3.

To the best knowledge of both the Parent Group and its representative, the issue discussed in this determination letter is not included in an earlier return of the Parent Group and the same or similar issue was not previously ruled on or requested, or is currently pending.

LAW

Internal Revenue Code ("IRC") § 1501 provides (in part) that "[a]n affiliated group of corporations shall ... have the privilege of making a consolidated return with respect to the income tax imposed by chapter 1 for the taxable year in lieu of separate returns. The making of a consolidated return shall be upon the condition that all corporations which at any time during the taxable year have been members of the affiliated group consent to all the consolidated return regulations prescribed under section 1502 prior to the last day prescribed by law for the filing of such return. The making of a consolidated return shall be considered as such consent."

IRC § 1504(a)(1) and (2) define the term "affiliated group" as "1 or more chains of includible corporations connected through stock ownership with a common parent corporation which is an includible corporation, but only if –

(i) The common parent directly owns stock with at least 80 percent of the total voting power and 80 percent of the total value of at least 1 of the other includible corporations, and

(ii) Stock with at least 80 percent of the total voting power and 80 percent of the total value of each of the includible corporations is directly owned by 1 or more of the other includible corporations.

Treas. Reg. § 1.1502-75(a)(1) 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 (in the manner provided in paragraph (b) of this section) to the regulations under section 1502."

Treas. Reg. § 1.1502-75(b)(1) provides that "[t]he consent of a corporation shall be made by the 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 paragraph (h)(2) of this section."

Treas. Reg. § 1.1502-75(b)(2) provides that “[i]f 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 were included in the consolidated return; (ii) Whether or not a separate return was filed by the member for that tax year; and (iii) Whether or not the member was included in the affiliations schedule, Form 851. 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 paragraph (h)(2) of this section.”

Treas. Reg. § 1.1502-75(b)(3) provides that “[i]f 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 fact, 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, and thus joined in the making of the consolidated return for such year.”

Treas. Reg. § 1.1502-75(h)(2) provides that “[i]f a group wishes to file a consolidated return for a taxable year, then a Form 1122 (Authorization and Consent of Subsidiary Corporation to Be Included in a Consolidated Income Tax Return) must be executed by each subsidiary...” For taxable years beginning after December 31, 2002, the group must attach either executed Forms 1122 or unsigned copies of the completed Forms 1122 to the consolidated return. 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.

Rev. Proc. 2014-24 allows an affiliated group that satisfies certain requirements to obtain an automatic determination to treat a subsidiary member of the affiliated group as if it filed a Form 1122, even though it failed to do so. Rev. Proc. 2014-24, Section 1.03 provides that if an affiliated group cannot satisfy such requirements, a determination by the Commissioner under Treas. Reg. §1.1502-75(b) is available only pursuant to a determination letter issued by a Director.

In this case, the Parent Group does not satisfy the requirements of Rev. Proc. 2014-24 necessary to obtain automatic relief to treat Sub 3 and Sub 4 as if they had filed Forms 1122 for the tax year ended Date 3. However, the Service may act on behalf of the Commissioner to treat Sub 3 and Sub 4 as if they had filed such Form 1122 and joined in the making of a consolidated return with and by Parent (and with and by the Parent Group) beginning with the tax year ended Date 3 and for all tax years ended thereafter under the provisions of Treas. Reg. §§ 1.1502-75(b)(2) or (3).

DETERMINATION

It is our position that Treas. Reg. § 1.1502-75(b)(3) applies in this case, because Parent has established to the satisfaction of the Commissioner that the failure of Sub 3 and Sub 4 to join in the making of the consolidated return was due to a mistake of law or fact, or to inadvertence. Therefore, Sub 3 and Sub 4 will be treated as if they filed Forms 1122 and joined in the making of a consolidated return with and by Parent (and with and by the Parent Group) beginning with the tax year ended Date 3 and for all tax years thereafter.

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 Parent Group as set out in the Summary of Facts and accompanied by a penalty of perjury declaration executed by an appropriate party.

PROCEDURAL MATTERS

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

A copy of this determination letter should be kept in the Parent Group's permanent records and must be attached to any income tax return to which it is relevant.

Sincerely,

Acting Director, Field Operations, Mid-Atlantic

cc: ***