



LARGE BUSINESS AND
INTERNATIONAL DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, DC 20224

Internal Revenue Service

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Third Party Communication: None
Date of Communication: Not Applicable

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

Telephone: ***

Date: 6/04/2024

Legend

Taxpayer 1 (Parent) = ***

Taxpayer 2 (Sub 1) = ***

Taxpayer 3 (Sub 2) = ***

Taxpayer 4 (Sub 3) = ***

Date 1 = ***

Date 2 = ***

Date 3 = ***

Date 4 = ***

Date 5 = ***

Date 6 = ***

Date 7 = ****

State 1 = ***

Dear ***:

This letter responds to the letter dated Date 1 submitted on behalf of Parent, Sub 1, Sub 2 and Sub 3 (the four corporations collectively, the "Affiliated Group" for purposes of this letter and to the extent these entities meet the definition provided by Internal Revenue Code ("IRC") § 1504(a)), requesting that the Commissioner make a determination regarding: (1) the failure of Parent's subsidiary, Sub 1, 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 taxable year ended Date 2; (2) the failure of Parent's subsidiary, Sub 2, 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 taxable

year ended Date 2; and (3) the failure of Parent's 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 taxable year ended Date 3.

The determination contained in this letter is based upon facts and representations submitted by the Taxpayer and accompanied by a penalties of perjury statement executed by an appropriate party.

SUMMARY OF FACTS

Taxpayer was organized on Date 4, under the laws of State 1. Taxpayer is a C-corporation and is in the financial services industry. Specifically, Taxpayer provides an open framework of services and interfaces designed to enable seamless integration of emerging distributed ledger technology capabilities and existing banking and exchange infrastructure.

Sub 2 was incorporated as a wholly owned subsidiary of Taxpayer on Date 5. Sub 2 is a C-corporation on the cash method of accounting and has a calendar year. Sub 1 was incorporated as a wholly owned subsidiary of Taxpayer on Date 6. Sub 1 is a C-corporation on the cash method of accounting and has a calendar year. Sub 3 was incorporated as a wholly owned subsidiary of Taxpayer on Date 7. Sub 3 is a C-corporation on the cash method of accounting and has a calendar year. For the entire time that Sub 2, Sub 1, and Sub 3 have been in existence, Taxpayer has been the sole shareholder, and in sole control of each of them.

Taxpayer and these subsidiaries did not satisfy the requirements for filing consolidated returns when Taxpayer filed its Forms 1120, U.S. Corporations Income Tax Return, for the taxable years ended Date 2, and Date 3. In particular, Taxpayer did not attach a Form 851, Affiliations Schedule, it did not attach a Form 1122, Authorization and Consent of Subsidiary To Be Included in a Consolidated Income Tax Return, for the relevant year a subsidiary intended to consent to join in the making of a consolidated return, and it did not check the "consolidated return" box on the face of any such return. Sub 2, Sub 1, and Sub 3 were not specifically identified or referenced on any such return.

Sub 2, Sub 1, and Sub 3 have never filed a separate U.S. income tax return for any taxable year.

At the time the Affiliated Group filed the request letter dated Date 1, the identical issue was not under examination or in litigation.

REPRESENTATIONS

Parent represents that its Forms 1120 for the taxable year ended Date 2, and all subsequent years contained all of the income, deductions, assets, and liabilities of Sub 2 and Sub 1. Parent also represents that its Forms 1120 for the taxable year ended Date 3, and all subsequent years contained all of the income, deductions, assets, and liabilities of Sub 3.

LAW

IRC § 1501 provides (in part) that an affiliated group of corporations shall, subject to the provisions of Chapter 6, 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) defines the term “affiliated group” as one 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 owns directly stock with at least 80% of the total voting power and 80% of the total value of at least 1 of the other includible corporations, and
- (ii) stock with at least 80% of the total voting power and 80% 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 that 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 referred to in paragraph (a)(1) of this section 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 taxable 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).”

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, under the paragraph (a)(1) of this section, 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 Affiliated Group does not satisfy the requirements of Rev. Proc. 2014-24 to obtain automatic relief to treat Sub 2, Sub 1, and Sub 3 as having filed Form 1122 and thus having joined in the making of a consolidated return by the Affiliated Group. The Service, however, may act on behalf of the Commissioner to treat Sub 2, Sub 1, and Sub 3 as if each had filed Form 1122 for purposes of Treas. Reg. § 1.1502-75(h)(2) under the provisions of Treas. Reg. §§ 1.1502-75(b)(2) or (3).

DETERMINATION

Based on the information submitted and the representations made in the letter dated Date 1, we have determined that Treas. Reg. § 1.1502-75(b)(2) can be applied in this case. Accordingly, Sub 2, Sub 1, and Sub 3 shall each be treated as if each had filed Form 1122 for purposes of Treas. Reg. § 1.1502-75(h)(2) as follows:

- Sub 2 shall be treated as if had filed a Form 1122 for the taxable year ended Date 2;
- Sub 1 shall be treated as if had filed a Form 1122 for the taxable year ended Date 2;
- Sub 3 shall be treated as if had filed a Form 1122 for the taxable year ended Date 3.

Parent's Forms 1120 for taxable years prior to the taxable year ended Date 3, failed to reference Sub 2, Sub 1, and Sub 3 on the Form 851 or reference them in any other way. Nonetheless, all income and deductions of Sub 2, Sub 1, and Sub 3 have been included in Parent's Forms 1120. None of these subsidiaries ever filed a separate return. Accordingly, based solely on the facts and representations submitted in the letter dated Date 1, the Service shall treat each subsidiary as if it had filed a Form 1122 as described in the preceding paragraph, and thus joined in the making of a consolidated return by the Affiliated Group, notwithstanding that each subsidiary failed to actually file Form 1122.

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 taxpayer 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's permanent records and must be attached to any income tax return to which it is relevant.

Sincerely,

Brenda Sarini
Acting Director, Field Operations (Mid-Atlantic)

cc: ***