

Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:

CC:DOM:CORP:2-PLR-119811-01

Date:

July 31, 2001

Legend:

Parent =

Subsidiary =

X =

Y =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

A =

B =

C =

D =

E =

a =

b =

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This is in response to your authorized representative's letter dated April 4, 2001, requesting a ruling on behalf of Parent that, under § 1504(a)(3)(B) of the Internal Revenue Code (the "Code"), the Service waive the general rule of § 1504(a)(3)(A) of the Code. Additional information was received in a letter dated May 14, 2001.

The information submitted indicates that Parent files its federal income tax returns using the accrual method of accounting and a taxable year ending September 30. Prior to Date 1, Parent was not a member of an affiliated group of corporations. On Date 1, Parent acquired all of the stock of Subsidiary. Parent filed a consolidated federal income tax return for its taxable year ending Date 2 (that is, the taxable year that included Date 1). That return included items of Subsidiary for the period beginning the day following Date 1 through Date 2. The Parent Group (i.e., the group consisting of Parent and Subsidiary) filed a consolidated federal income tax return for the taxable year(s) following the year ending Date 2.

On Date 3, Parent transferred its net assets (including all of the outstanding stock of Subsidiary) to X in exchange for an a% interest in X. Individuals A, B, C, D, and E transferred funds to X in exchange for the remaining b% interest in X..

Parent's transfer of all of the Subsidiary stock to X resulted in Subsidiary ceasing to be a member of the Parent affiliated group as of the close of business on Date 3. Consequently, Parent filed a consolidated federal income tax return for the year that included Date 3 which included the items of Subsidiary only for the period through Date 3. Subsidiary filed a separate federal income tax return for the period from the day following Date 3 through the end of its taxable year, and for the following taxable year(s).

On Date 4, X distributed all of the outstanding stock of Subsidiary to Parent (the "Date 4 Distribution"). The business purpose of the Date 4 Distribution was to enable X to obtain financing for expansion of the business it directly conducted. Such financing was difficult to obtain while Subsidiary, whose business had had poor results for a year or more preceding the Date 4 Distribution, was owned by X. Also on Date 4, and subsequent to the Date 4 Distribution, Parent transferred the Subsidiary stock to Y, which was then and always has been an entity wholly owned by Parent and disregarded for tax purposes under Treas. Reg. §§ 301.7701-2 and 301.7701-3. Because Y is disregarded for tax purposes, Parent is treated as owning the stock of Subsidiary directly and therefore Parent and Subsidiary may constitute an affiliated group of corporations within the meaning of § 1504(a) of the Code.

Parent has represented, and has submitted information indicating, that the disaffiliation of Subsidiary on Date 3 and reaffiliation of Subsidiary on Date 4 will not secure for the Parent Group, Parent, or Subsidiary a benefit of a reduction in income, increase in loss, or any other deduction, credit, or allowance that would not otherwise be secured had the disaffiliation and reconsolidation not occurred, including, but not

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limited to, the use of a net operating loss or credit that would otherwise have expired. This representation forms a material basis for the issuance of this ruling letter.

Section 1504(a)(3)(A) of the Code provides that if a corporation is included (or required to be included) in a consolidated return filed by an affiliated group for a taxable year which includes any period after December 31, 1984, with respect to periods after such cessation, such corporation (and any successor of such corporation) may not be included in any consolidated return filed by the affiliated group (or by another affiliated group with the same common parent or a successor of such common parent) before the 61st month beginning after its first taxable year in which it ceased to be a member of such affiliated group.

Section 3.01 of Rev. Proc. 91-71, 1991-2 C.B. 900, grants an automatic waiver of the general rule of § 1504(a)(3)(A) of the Code for taxpayers requesting a waiver and meeting the requirements of Rev. Proc. 91-71. If a taxpayer qualifies for the automatic waiver of Rev. Proc. 91-71, § 3.01, the procedure described therein is the exclusive procedure available for obtaining a waiver of the rule contained in § 1504(a)(3)(A). Rev. Proc. 91-71, § 1.02.

The automatic waiver of § 3.01 of Rev. Proc. 91-71 generally applies to any corporation that ceased to be a member of a group and rejoined the same group. For purposes of Rev. Proc. 91-71, "the same group" means a group that remains in existence within the meaning of § 1.1502-75 of the Income Tax Regulations). Rev. Proc. 95-71, § 4.01. The automatic waiver in Rev. Proc. 91-71 does not apply in this case because the Parent Group ceased to exist as a result of the disaffiliation of Subsidiary, the only subsidiary of Parent, on Date 3. See § 1.1502-75(d)(1).

Based on the information submitted and representations made, it is concluded that:

Application of § 1504(a)(3)(A) of the Code is hereby waived. Provided that Parent and Subsidiary constitute an affiliated group of corporations within the meaning of § 1504(a), Parent and Subsidiary may join in the filing of a consolidated federal income tax return beginning with the day following Date 4 and for subsequent years.

No opinion is expressed about the tax treatment of the transaction under any other provisions of the Code and regulations or about the tax treatment of any conditions existing at the time of, or effects resulting from, the transaction that are not specifically covered by the above ruling.

Temporary or final regulations pertaining to one or more of the issues addressed in this ruling have not yet been adopted. Therefore, this ruling will be modified or revoked by adoption of temporary or final regulations, to the extent the regulations are inconsistent with any conclusions in the ruling. See § 12.04 of Rev. Proc. 99-1, 1999-1

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I.R.B. 6. However, when the criteria in § 12.05 of the Rev. Proc. are satisfied, a ruling is not revoked or modified retroactively, except in rare or unusual circumstances.

This ruling is directed only to the taxpayers who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter should be attached to the federal income tax return of the taxpayers involved for the taxable year in which the transaction covered by this ruling letter is consummated.

Sincerely yours,
Associate Chief Counsel (Corporate)
By: Edward S. Cohen
Chief, Branch 2