Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

[Third Party Communication:
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Person To Contact:
, ID No.
Telephone Number:

Refer Reply To:
CC:CORP:BO1
PLR-138807-05

Date:
November 18, 2005

In Re:

Parent =

Sub 1 =

Sub 2 =

Sub 3 =

Business M =

Year 1 =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Accounting Firm =

Dear

This letter responds to the request for rulings dated July 18, 2005 submitted by your authorized representative, requesting that the Commissioner make a determination, under § 1.1502-75(b)(2) of the Income Tax Regulations, that Sub 1, Sub 2, and Sub 3 have joined in the making of the initial consolidated return filed by Parent for Year 1.

Summary of Facts

Parent is a corporation incorporated on Date 1 that is engaged in Business M. Parent incorporated Sub 1 on Date 2 for the purpose of acquiring Sub 2.

On Date 2 of Year 1, Sub 1 acquired Sub 2 in what the taxpayer represents was a qualified stock purchase in which an election under § 338(h)(10) of the Internal Revenue Code was made. Sub 2 was a wholly owned subsidiary of Sub 1 after the acquisition.

On Date 3 of Year 1, Sub 2 acquired Sub 3 in what the taxpayer represents was a qualified stock purchase in which an election under § 338(h)(10) was made. Sub 3 was a wholly owned subsidiary of Sub 2 after the acquisition.

Parent, Sub 1, Sub 2, and Sub 3 retained Accounting Firm to prepare its tax return for Year 1. Parent and all three subsidiaries informed Accounting Firm that they intended to file a consolidated return with Parent as the common parent for Year 1. On Date 4, Parent timely filed a return with a consolidated statement of income and a Form 851, Affiliations Schedule, that identified Sub 1, Sub 2, and Sub 3.

On Date 5, Accounting Firm noticed that Form 1122 (Subsidiary Corporation's Consent to be included in a Consolidated Return) was inadvertently not filed for any of the subsidiaries with the Year 1 consolidated return.

The statute of limitations under § 6501(a) has not expired for tax returns filed for Year 1.

Representations

The taxpayers have made the following representations:

(a) Except for the failure to timely file Forms 1122, Parent and its subsidiaries were eligible to file a consolidated return that included all of its members for Year 1.

(b) Forms 1122 were inadvertently not filed with the Parent's consolidated return for Year 1.

(c) Parent relied on qualified tax professionals to prepare the consolidated return for Year 1.

(d) For Year 1, Parent and its subsidiaries reported all of their income and expenses on a timely filed consolidated return.

(e) For Year 1, Parent and its subsidiaries did not file separate returns.

(f) For Year 1, all the affiliated subsidiaries of Parent were included on the Form 851, Affiliations Schedule, attached to the consolidated return.

Applicable Law

Section 1.1502-75(a)(1) of the Income Tax Regulations provides, in part, that an affiliated group of corporations 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 of the group during any part of the taxable year for which the consolidated return is to be filed consents, in accordance with § 1.1502-75(b).

Section 1.1502-75(a)(2) provides that a group which filed (or was required to file) a consolidated return for the immediately preceding taxable year is required to file a consolidated return for the taxable year, unless it has been granted permission by the Commissioner to discontinue filing consolidated returns.

With regard to the consent of a corporation for a group's first consolidated year, § 1.1502-75(b)(1) provides, as a general rule, that the consent of a corporation shall be made by such corporation joining in the making of the consolidated return for such year and that a corporation shall be deemed to have joined in the making of such return for such year, if it files a Form 1122 in the manner specified in § 1.1502-75(h)(2).

Section 1.1502-75(h)(2) now refers to temporary regulation § 1.1502-75T(h)(2). That section provides that if, under the provisions of § 1.1502-75(a)(1), a group wishes to file a consolidated return for a taxable year, a Form 1122 must be executed by each subsidiary. This regulation provides rules for properly executing Forms 1122 and attaching them to a consolidated return, and also provides that a Form 1122 shall not be 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) of the regulations provides that if a member of the group fails to file the Form 1122, the Commissioner may under the facts and

circumstances determine that such member has nevertheless joined in the making of a consolidated return by such group. Factors that the Commissioner will take into account in making this determination include the following:

(i) Whether or not the income and deductions of each member for such taxable year were included in the consolidated return;

(ii) Whether or not a separate return was filed by any member for that taxable year; and

(iii) Whether or not the member of the group was included in the affiliations schedule, Form 851, for such taxable year.

Where the Commissioner under the facts and circumstances determines that the member has joined in the making of a consolidated return, such member will be treated for purposes of § 1.1502-75(h)(2) as if it had filed a Form 1122 for such year. Section 1.1502-75(b)(2), flush language.

Ruling

Based solely on the information submitted and the representations made, we rule that Sub 1, Sub 2, and Sub 3 are treated under § 1.1502-75(h)(2) as if they had filed Forms 1122 with the consolidated return of the Parent consolidated group for Year 1.

Caveats

We express no opinion about the tax treatment of the facts described above under other provisions of the Code or regulations, or the tax treatment of any conditions existing at the time of, or effects resulting from, these facts that are not specifically covered by the above ruling. In particular, we express no opinion on whether valid elections under § 338(h)(10) were made for the acquisitions of Sub 2 and Sub 3.

The ruling contained in this letter is based on information 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 this material may be required as part of the audit process.

Procedural Statements

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

Each taxpayer involved in the transaction should attach a copy of this ruling letter to the taxpayer's federal income tax return for the taxable year in which the transaction covered by this letter is completed.

Under a power of attorney on file in this office, copies of this letter are being sent to your authorized representatives.

Sincerely,

Mark S. Jennings
Chief, Branch 1
Office of Associate Chief Counsel
(Corporate)

cc: