

**Internal Revenue Service**

Number: **200607012**

Release Date: 2/17/2006

Index Number: 1504.00-00

Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

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PLR-143673-05

Date:

November 15, 2005

Legend

Parent =

Subsidiaries =

First Acquirer =

Second Acquirer =

Year 1 =

Year 2 =

Year 3 =

Date A =

Date B =

Date C =

X =

Dear :

This is in response to a letter dated August 12, 2005, requesting a ruling pursuant to § 1504(a)(3)(B) of the Internal Revenue Code that the Secretary waive the general rule set forth in § 1504(a)(3)(A).

Parent was the common parent of an affiliated group that included Subsidiaries. Parent and Subsidiaries (the "Former Group") filed a consolidated Federal income tax return beginning in Year 1. On Date A, First Acquirer purchased all outstanding shares in Parent. As a result, the Former Group ceased to exist as of Date A.

Parent and Subsidiaries each filed separate Federal income tax returns for the tax years beginning after Date A and ending at the close of Year 2.

On Date B (a date less than sixty months after the first taxable year in which the Former Group ceased to exist), Second Acquirer purchased X% of the outstanding shares of Parent. As a result, Parent became the common parent of an affiliated group (the "New Group") that included members of the Former Group.

New Group wishes to file a consolidated federal income tax return for Year 3 and for subsequent taxable years. Because New Group cannot comply with the requirements of Rev. Proc. 2002-32, 2002-1 C.B. 959, which grants an automatic waiver of § 1504(a)(3)(A) in certain circumstances, New Group is seeking a waiver under § 1504(a)(3)(B).

Section 1504(a)(3)(A) provides that if a corporation is included in a consolidated federal income tax return filed by an affiliated group of corporations and such corporation ceases to be a member of such group, such corporation (or 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. Because Parent was the common parent of the Former Group and is the common parent of the New Group, the New Group is precluded from filing a consolidated return prior to the 61st month beginning after the first taxable year in which the Former Group ceased to exist. However, § 1504(a)(3)(B) allows the Secretary to waive the application of § 1504(a)(3)(A) to any corporation for any period subject to such conditions as the Secretary may prescribe. Section 1504(a)(3)(A) was enacted by section 60(a) of the Tax Reform Act of 1984. The Conference Report states that the rule prohibiting consolidation after deconsolidation is an anti-abuse rule. H.R. Conf. Rep. No. 98-861, at 833 (1984).

Rev. Proc. 2002-32 grants an automatic waiver of the general rule of § 1504(a)(3)(A) for taxpayers who meet its requirements. Section 5 of Rev. Proc. 2002-32 specifies the information and representations to be included in a request for an automatic waiver. Section 5.14 of Rev. Proc. 2002-32 provides that the request must include a representation that the disaffiliation and subsequent consolidation has not provided and will not provide a benefit of a reduction in income, increase in loss, or any other deduction, credit, or allowance (a federal tax savings) that would not otherwise be secured or have been secured had the disaffiliation and subsequent consolidation not occurred, including, but not limited to, the use of a net operating loss or credit that would otherwise have expired, or the use of a loss recognized on a disposition of stock of the deconsolidated corporation or a predecessor of such corporation. Section 5.14 of Rev. Proc. 2002-32 further provides that in determining whether the disaffiliation and subsequent consolidation provided or will provide a federal tax savings, the net tax consequences to all parties, taking into account the time value of money, are considered.

Section 7 of Rev. Proc. 2002-32 provides that if a deconsolidated corporation cannot qualify for an automatic waiver, a waiver under § 1504(a)(3)(B) may only be obtained through a letter ruling request. Section 7 of Rev. Proc. 2002-32 further provides that the ruling request should include the information set forth in § 5 of Rev. Proc. 2002-32. The letter ruling request must be submitted by the common parent of the affiliated group of which the deconsolidated corporation becomes a member before the due date (including extensions) of the consolidated return for the tax year with respect to which the waiver is requested. This letter ruling request was due on Date C, the due date (including extensions) of the Year 3 consolidated Federal income tax return. However, for various reasons, a valid Election was not filed. In a private letter ruling dated August 5, 2005, an extension of time was granted to the taxpayer to file this letter ruling request.

Based solely on the information and representations submitted, we rule that, pursuant to § 1504(a)(3)(B), the application of § 1504(a)(3)(A) is waived. Provided that the New Group constitutes an affiliated group of corporations within the meaning of

§ 1504(a), the New Group may file a consolidated federal income tax return for Year 3, subject to the time limit set forth in the private letter ruling issued to this taxpayer on September 30, 2005.

The ruling contained in this letter is based upon information and representations submitted by the taxpayer and accompanied by a penalties of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

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

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

*Marc A. Countryman*

Marc A. Countryman  
Senior Technician Reviewer, Branch 4  
Office of Associate Chief Counsel  
(Corporate)

cc: