

## Part III

### Administrative, Procedural, and Miscellaneous

26 CFR 601.201: Rulings and determination letters.  
(Also Part 1, §§ 1502, 1.1502-75)

Rev. Proc. 2014-24

#### SECTION 1. PURPOSE

.01 Section 1.1502-75(b) of the Income Tax Regulations authorizes the Commissioner in certain cases to treat a subsidiary member of an affiliated group of corporations as if it had filed a Form 1122, *Authorization and Consent of Subsidiary Corporation To Be Included in a Consolidated Income Tax Return*, even though it failed to do so. The Commissioner will treat one or more subsidiary members of an affiliated group (hereinafter, subsidiary) as if it had filed a Form 1122 under the conditions described in section 3 of this revenue procedure.

.02 Except as provided in section 1.04 of this revenue procedure, if an affiliated group satisfies the requirements of section 3 of this revenue procedure, the automatic determination by the Commissioner under § 1.1502-75(b) granted by section 3.01 of this revenue procedure is the exclusive means for the Commissioner to determine under § 1.1502-75(b) that a subsidiary is treated as if it filed Form 1122 and thus joined in the making of a consolidated return by the affiliated group, notwithstanding that the subsidiary failed to actually file Form 1122. Such an automatic determination by the Commissioner is available regardless of whether the return of the common parent of the affiliated group is under examination.

.03 If an affiliated group cannot satisfy the requirements of section 3 of this revenue procedure, a determination by the Commissioner under § 1.1502-75(b) is

available only pursuant to a determination letter issued by a Director (and not a letter ruling issued by the Associate Chief Counsel (Corporate)). See Rev. Proc. 2014-1, 2014-1 I.R.B. 1 (or a successor revenue procedure), for the procedures for requesting a determination letter and the information that must be submitted in a determination letter request. An affiliated group may not request a determination letter for a determination by the Commissioner under § 1.1502-75(b) if, at the time of the request, the identical issue is under examination or consideration or in litigation. See section 6.01 of Rev. Proc. 2014-1, 2014-1 I.R.B. 1, 14 (or a successor revenue procedure). A user fee is required for a determination letter request. See Appendix A of Rev. Proc. 2014-1, 2014-1 I.R.B. 1, 67 (or a successor revenue procedure).

.04 The Commissioner, on his own accord, or at the request of the common parent of the affiliated group, may, upon examination, determine pursuant to § 1.1502-75(b)(2) or (3), based on the standards described therein, that a subsidiary is treated as if it filed a Form 1122, pursuant to § 1.1502-75(h)(2).

## SECTION 2. BACKGROUND

.01 Section 1.1502-75(a)(1) provides that an affiliated group of corporations that 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 of the group during any part of the taxable year for which the consolidated return is to be filed consents to the regulations under § 1502 (in the manner prescribed in § 1.1502-75(b)). If a group wishes to exercise its privilege of filing a consolidated return, a consolidated return must be filed not later than the last day prescribed by law (including extensions of time) for the filing of the common parent's tax return. The consolidated return may not be withdrawn after such last day (but the group may withdraw the consolidated return at any time prior to such last day).

.02 Section 1.1502-75(b)(1) provides, as a general rule, that a corporation's consent shall be made by the corporation joining in the making of the consolidated return. 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 § 1.1502-75(h)(2).

.03 Section 1.1502-75(b)(2) provides that if a member of the group fails to file Form 1122, the Commissioner may under the facts and circumstances determine that the member has joined in the making of a consolidated return by the 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 on Form

851, *Affiliations Schedule*. If the Commissioner determines that the member has joined in the making of the consolidated return, the member shall be treated as if it had filed a Form 1122 for the year for purposes of § 1.1502-75(h)(2).

.04 Section 1.1502-75(b)(3) provides that if any member has failed to join in the making of a consolidated return under either § 1.1502-75(b)(1) or § 1.1502-75(b)(2), 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 the 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, the member shall be treated as if it had filed a Form 1122 for the year for purposes of § 1.1502-75(h)(2), and thus joined in the making of the consolidated return for the year.

.05 Section 1.1502-75(h)(2) provides that if a group wishes to file a consolidated return for a taxable year, then a Form 1122 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. If the group submits unsigned Forms 1122 with its return, it must retain the signed originals in its records in the manner required by § 1.6001-1(e). 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.

### SECTION 3. AUTOMATIC DETERMINATION UNDER § 1.1502-75(b)

.01 Pursuant to § 1.1502-75(b), if an affiliated group satisfies the conditions described in sections 3.02, 3.03, 3.04, and 3.05 of this revenue procedure, it is hereby determined by the Commissioner that a subsidiary that actually failed to file a Form 1122 (non-filing subsidiary) is treated as if it filed a Form 1122 and thus joined in the making of a consolidated return by the affiliated group.

.02 The affiliated group timely filed what purported to be a consolidated return for the taxable year, either (a) including Form 851 with the affiliated group's return, or (b) providing some other clear and unequivocal indication on the return that the return was intended as a consolidated return for the affiliated group, for example, checking of the appropriate box in Item A at the top of the tax return.

.03 The non-filing subsidiary was not prevented from joining in the filing of the consolidated return by any applicable rule of law, other than the failure to file Form 1122 (for example, section 1504(a)(3) of the Internal Revenue Code, concerning the five-year prohibition on a member that disaffiliated from a consolidated group joining in the filing

of a consolidated return by the affiliated group or by another affiliated group with the same common parent).

.04 A separate return was not filed by the non-filing subsidiary for any period of time included in the consolidated return, or any subsequent taxable year, other than (a) a separate return for a period in which the non-filing subsidiary's income and deductions were not properly includible in the affiliated group's consolidated return, or (b) a partnership return, all the income and deductions of which were included on the consolidated return as part of the income and deductions of the partners, all of which were members of the affiliated group.

.05 One of the following three conditions is met:

(1) The consolidated return did not include a Form 1122 for the non-filing subsidiary due to a mistake of law or fact, or to inadvertence, provided that the affiliated group believed that the non-filing subsidiary was a member of the affiliated group for the taxable year and included the non-filing subsidiary's income and deductions in the consolidated return as if the non-filing subsidiary was a member of the affiliated group;

(2) The consolidated return did not include a Form 1122 for the non-filing subsidiary due to a mistake of law or fact, or to inadvertence, provided that all of the non-filing subsidiary's income and deductions were included on the consolidated return as part of the income and deductions of another member of the group. For example, the affiliated group believed that the non-filing subsidiary was disregarded as an entity separate from its owner for Federal income tax purposes or had formally ceased to exist pursuant to a merger or liquidation into another member of the group; or

(3) The consolidated return did not include a Form 1122 for the non-filing subsidiary because the affiliated group believed that the non-filing subsidiary was taxable as a partnership for Federal income tax purposes, provided that all of the non-filing subsidiary's income and deductions were included on the consolidated return as part of the income and deductions of its partners.

#### SECTION 4. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 2014-3, 2014-1 I.R.B. 111, is amplified.

#### SECTION 5. EFFECTIVE DATE

This revenue procedure is generally effective March 24, 2014. A determination letter may be issued with respect to a request for a determination letter postmarked or, if

not mailed, received on or before March 24, 2014. Requests for a determination letter postmarked, or if not mailed, received, on or before March 24, 2014, that are not in substantial compliance with Rev. Proc. 2014-1, 2014-1 I.R.B.1 (or a successor revenue procedure), will be considered as not postmarked or received on or before March 24, 2014, and will be returned to the taxpayer.

#### SECTION 6. DRAFTING INFORMATION

The principal author of this revenue procedure is Ken Cohen of the Office of Associate Chief Counsel (Corporate). For further information regarding this revenue procedure contact Mr. Cohen on (202) 317-6848 (not a toll-free call).