Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:
CC:DOM:CORP:4 -PLR-108916-00
Date:
September 6, 2000

Old Parent =

Sub 1 =

Sub 2 =

Sub 3 =

Sub 4 =

Corp A =

Corp B =

Corp C =

Corp D =

Corp E =

Corp F =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Year 5 =

Year 6 =

Date 7 =

Date 8 =

Date 9 =

Date 10 =

Year 11 =

Date 12 =

Date 13 =

This letter responds to your April 10, 2000 request for a ruling that, under § 1504(a)(3)(B) of the Internal Revenue Code, the Internal Revenue Service waive the general rule of § 1504(a)(3)(A).

The information submitted indicates that Old Parent was the common parent of a consolidated group in which Old Parent wholly owned Sub 1, and Sub 1 wholly owned Sub 2. Sub 1 had owned Sub 2 since Sub 2's creation on Date 1 in a transaction intended to qualify under § 351 ("Contribution 1"). As a result of an initial public offering of Sub 2 stock on Date 2 (the "IPO"), Sub 1 lost "control" of Sub 2 as that term is defined under § 1504(a) (the "Disaffiliation"). Consequently, Sub 2 joined in the Old Parent calendar year consolidated return for the short period of Date 1 to Date 2 and filed a separate return for the short period of Date 3 to Date 4, as well as for Year 5 and Year 6.

The submitted information also indicates that Corp A was the common parent of a consolidated group in which Corp A wholly owned Sub 3, and Sub 3 wholly owned Sub 4. On Date 7 Corp A formed Corp B, and on Date 8 Corp A merged into Corp B in a transaction intended to qualify under § 368(a)(1)(F) ("Merger 1"). Also on Date 8 Corp B changed its name to Corp C.

On Date 9 Old Parent merged into Corp C in a transaction intended to qualify under § 368(a)(1)(A) ("Merger 2"). Because Merger 2 was not a "reverse acquisition" as defined in § 1.1502-75(d)(3)(i) of the Income Tax Regulations, the Old Parent consolidated group ceased to exist as a result of Merger 2. Corp C changed its name to Corp D on Date 9.

On Date 10 Corp D changed its name to Corp E, and all the shares of Sub 2

held by non-members of the Corp E affiliated group were converted into a right to receive cash (the "Conversion"). As a result of the Conversion, Sub 2 became a member of the Corp E affiliated group but was prevented by § 1504(a)(3)(A) from joining in the Corp E consolidated return until calendar Year 11.

On Date 12 Corp E contributed the stock of Sub 1 to Sub 3 in a transaction intended to qualify under § 351 ("Contribution 2"). Immediately after Contribution 2, Sub 4 merged into Sub 1 in a transaction intended to qualify as a reorganization under § 368(a)(1)(A) ("Merger 3"). Sub 1 then changed its name to Corp F.

Taxpayer represents that there is no plan or intention by Corp E, Corp F, or the management of Corp E or Corp F, to liquidate Sub 2 into Corp F.

Corp E timely filed this request that it be allowed to file a consolidated return with Sub 2 beginning on Date 13 (the date following the reaffiliation) and for subsequent years.

Section 1504(a)(3)(A) 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 that includes any period after December 31, 1984, and the corporation ceases to be a member of the group in a taxable year beginning after December 31, 1984 for periods after the cessation, the corporation (and any successor of the 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 the common parent) before the 61st month beginning after the first taxable year in which it ceased to be a member of the affiliated group. 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 § 60(a) of the Tax Reform Act of 1984. The Conference Report stated that the rule prohibiting consolidation after deconsolidation was an anti-abuse rule. H.R. Conf. Rep. No. 98-861, at 833 (1984).

Rev. Proc. 91-71, 1991-2 C.B. 900, grants an automatic waiver of the § 1504(a)(3)(A) general rule for taxpayers who meet its requirements. If a taxpayer qualifies for the automatic waiver, the process described in the revenue procedure is the exclusive means for obtaining a waiver of § 1504(a)(3)(A). The automatic waiver generally applies to any corporation that ceased to be a member of a group and rejoins the same group (i.e., the group remained in existence within the meaning of § 1.1502-75). Because Merger 2 terminated the Old Parent consolidated group, Sub 2 cannot rejoin the group to which it belonged before the Disaffiliation and therefore cannot avail itself of the automatic waiver. **Consequently, the parties in this case must obtain a ruling granting a § 1504(a)(3) waiver before a consolidated return may be filed.**

Corp E represents that the Disaffiliation and reaffiliation on Date 12 has not, and will not, provide a benefit of a reduction in income, increase in loss, or any other deduction, credit, or allowance that would not otherwise be secured or have been secured had the Disaffiliation and reaffiliation not occurred, including, but not limited to, the use of a net operating loss or credit that would otherwise have expired.

The representations submitted by the taxpayer form a material basis for issuance of the ruling letter. Based upon the information submitted and on the representations set forth above, we rule that, pursuant to § 1504(a)(3)(B), the application of § 1504(a)(3)(A) is hereby waived. Provided that Sub 2 and Corp E constitute an affiliated group of corporations within the meaning of § 1504(a), Sub 2 and Corp E may join in the filing of a consolidated federal income tax return beginning on Date 13 and for subsequent taxable years.

No opinion is expressed or implied about the tax treatment of the transactions 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, the transactions that are not specifically covered by the above rulings. In particular, no opinion is expressed concerning the tax effect of Merger 1, Merger 2, Merger 3, Contribution 1, Contribution 2, or the Conversion.

This ruling letter 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 this 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.

In accordance with the power of attorney on file with this office, a copy of this letter is being sent to each of your authorized representatives.

Sincerely yours,
Assistant Chief Counsel (Corporate)

By: ________________________
Wayne T. Murray
Senior Technician/Reviewer
Branch 4