



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

OFFICE OF
CHIEF COUNSEL

August 1, 2000

Number: **200105002**
Release Date: 2/2/2001
CC:DOM:CORP
FREV-108170 -00
UILC: 1502.50-00

INTERNAL REVENUE SERVICE NATIONAL OFFICE FIELD SERVICE ADVICE

MEMORANDUM FOR JOHN L. SCHMITZ
R/A MIDWEST DISTRICT

FROM: Assistant to the Chief, Branch 2, CC:CORP
SUBJECT: Inclusion in Consolidated Return

This Field Service Advice responds to your memorandum dated March 23, 2000. Field Service Advice is not binding on Examination or Appeals and is not a final case determination. This document is not to be cited as precedent.

LEGEND

Foreign Parent =
U.S. Parent =
Sub =

ISSUES When does the period of eligibility begin for a life insurance company to be included as a member of the consolidated return?

CONCLUSIONS The taxpayer was properly included in the consolidated group's return only in the year the corporation did not qualify as a life insurance company.

FACTS

Sub, a domestic corporation, was purchased on _____ by U.S. Parent. U.S. Parent is the common parent of a life-nonlife consolidated group. U.S. Parent's stock is owned by a foreign corporation, Foreign Sub. Foreign Sub is owned by Foreign Parent.

FREV-108170 -00

In _____, the Sub stock was transferred to Foreign Parent. On _____, the Sub stock was re-transferred to U.S. Parent.

For the _____ tax year, Sub did not qualify under I.R.C. § 816 as life insurance company. U.S. Parent included Sub in the U.S. Parent's _____ life-nonlife consolidated return for the year. For the _____ tax year, Sub qualified as a life insurance company and was included in the U.S. Parent's life-nonlife consolidated return.

LAW AND ANALYSIS

I.R.C. § 1504(a)(1) provides that an “affiliated group” means one or more chains of includible corporations connected through stock ownership. Stock meeting the requirements in each of the includible corporations must be owned directly by 1 or more of the other includible corporations.

I.R.C. § 1504(b) provides, in part, that the term “includible corporation” means any corporation except ... (2) insurance companies subject to taxation under section 801 and (3) Foreign corporations....

I.R.C. § 1504(c)(2) provides that the common parent of a group may elect to treat domestic insurance companies as includible corporations except that no such company shall be so treated until it has been a member of the affiliated group for the 5 taxable years immediately preceding the taxable year.

Treas. Reg. § 1.1502-47(d)(13) provides that a corporation that is not an eligible corporation is ineligible. If a life company is ineligible, it is not treated under section 1504(c)(2) as an includible corporation.

Treas. Reg. § 1.1502-47(d)(12)(i) provides, in part, that a corporation is an eligible corporation for a taxable year of a group only if, throughout every day of the base period (the common parent's five taxable years immediately preceding the group's taxable year for which the consolidated return and the determination of eligibility are made), the corporation:

- (A) Was in existence and a member of the group determined without the exclusions in § 1504(b)(2),
- (B) Was engaged in the active conduct of a trade or business,
- (C) Did not experience a change in tax character (within the meaning of Treas. Reg. § 1.1502-47(d)(12)(vii)), and

FREV-108170 -00

- (D) Did not undergo disproportionate asset acquisitions (within the meaning of Treas. Reg. § 1.1502-47(d)(12)(viii).

Treas. Reg. § 1.1502-47(d)(12)(iv) provides, in part, that a corporation must have been a member of the group throughout the base period to be eligible. Thus, an ineligible corporation includes one whose stock was acquired from outside the group at any time during the base period.

CASE DEVELOPMENT, HAZARDS AND OTHER CONSIDERATIONS

We agree with your analysis that Sub was improperly included in the U.S. Parent's consolidated return. For the and tax years, Sub was not a member of the U.S. Parent affiliated group, as defined by § 1504(a), for every day of the U.S. Parent's previous 5 taxable years and thus was an ineligible member of the U.S. Parent consolidated group. Treas. Reg. § 1.1502-47(d)(12).

For the tax year, Sub was an ineligible nonlife company. As an ineligible nonlife company, it is an includible corporation and joins in the U.S. Parent's consolidated return. However, as an ineligible nonlife company, Sub's losses may not be used to set off the income of a life member. Treas. Reg. § 1.1502-47(d)(13).

For the tax year, Sub qualified as a life insurance company. As an ineligible life insurance company, it is not an includible corporation under § 1504(c)(2) in the U.S. Parent group and should not be included in the consolidated return. Treas. Reg. § 1.1502-47(d)(13). Sub must file a separate return for .

With regards to additional information and development, the only additional factual information that would be relevant to whether Sub should have been included in the U.S. Parent's consolidated return concerns whether there were asset transfers from eligible members of the group. It is possible that such asset transfers could cause Sub to be eligible under the tacking rule of Treas. Reg. § 1.1502-47(d)(12)(v).

Please call Guy Barry at 622-8012 if you have any further questions.

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