



Sub11 =

Sub12 =

Sub13 =

Parent =

Date1 =

State X =

Date2 =

Date3 =

Accounting Firm =

Dear :

We respond to your request for rulings dated December 17, 2007, submitted by your authorized representative, requesting that the Commissioner make a determination, under § 1.1502-75(b)(2) of the Income Tax Regulations (the "Regulations"), that Sub1 through Sub13 (collectively, "Omitted Subs") have joined in the making of an initial consolidated Federal income tax return filed by Parent for the taxable year ended Date1. The information submitted in that request and in later correspondence is summarized below.

### **Facts**

Parent is a corporation incorporated on Date2 under the laws of State X. During the taxable year ended Date1, Parent organized or acquired Omitted Subs. Parent wholly owns each of its Omitted Subs. Parent retained Accounting Firm to prepare its consolidated Federal income tax return for the taxable year ended Date1. Accounting Firm understood that Parent and its Omitted Subs ("Parent Group") intended to file a consolidated Federal income tax return for the taxable year ended Date1. Accounting Firm timely filed Parent's Form 1120, including a Form 851 ("Affiliation Schedule")

identifying and including the Omitted Subs but inadvertently failed to file Forms 1122 (“Authorization and Consent of Subsidiary Corporation To Be Included in a Consolidated Return”). The statute of limitations under section 6501(a) of the Internal Revenue Code (the “Code”) has not expired for tax returns filed for the taxable year ended Date1.

### **Representations**

The taxpayers have made the following representations:

- (a) All of the income and deductions for each member of the Parent Group was included in the consolidated Federal income tax return for the taxable year ended Date1.
- (b) A separate federal income tax return was not filed by any of the members of the Parent Group for the taxable year ended Date1.
- (c) All of the members of the Parent Group were included on Parent's affiliations schedule, Form 851, for the taxable year ended Date1.
- (d) Except for the failure to timely file Forms 1122, Parent and its Omitted Subs were eligible to file a consolidated Federal income tax return, with Parent as the common parent, for the taxable year ended Date1.
- (e) As of the date of this request, the Internal Revenue Service has not notified Parent or Omitted Subs of the failures to file Forms 1122 with the consolidated Federal income tax return for the taxable year ended Date1.

### **Law**

Section 1.1502-75(a)(1) of the Income Tax Regulations provides that a group 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 during any part of the taxable year for which the consolidated return is to be filed consents to the regulations under § 1502.

Section 1.1502-75(b)(1) provides that the consent of a corporation shall be made by such corporation joining in the making of a consolidated return for such year. 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) provides that if, under the provisions of § 1.1502-75(a)(1), a group wishes to file a consolidated return for a taxable year, then a Form 1122 must be executed by each subsidiary. The regulation provides rules for properly

executing Forms 1122 and attaching them to a consolidated return and also provides that a 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 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 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 the member for such taxable year 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 in the affiliations schedule, Form 851, for such taxable year.

### **Ruling**

Based solely on the information submitted and the representations made, we rule that, pursuant to § 1.1502-75(b), Sub1 through Sub13 are treated under § 1.1502-75(h)(2) as if they had filed Forms 1122 with the consolidated Federal income tax return of the Parent Group for the taxable year ended Date1.

### **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.

The ruling contained in this letter is based upon 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 requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

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,

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Filiz A. Serbes  
Chief, Branch 3  
(Office of Associate Chief Counsel (Corporate))