

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

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Refer Reply To:  
CC:CORP:B03  
PLR-143163-10  
Date:  
February 14, 2011

Parent =

Sub 1 =

Sub 2 =

Date 1 =

Date 2 =

Date 3 =

Year 1 =

Dear :

This letter responds to a letter dated August 24, 2010, submitted on behalf of Parent, requesting a ruling that the Commissioner determine, under § 1.1502-75(b)(2) of the Income Tax Regulations, that Sub 1 and Sub 2 joined in the making of the initial consolidated Federal income tax return filed by Parent for the short year Date 1 through Date 3 within Year 1. Additional information was submitted in letters dated December 8, and December 20, 2010. The information is summarized below.

Prior to Date 1, Parent qualified as an S corporation and Sub 1 was a Qualified Subchapter S subsidiary wholly-owned by Parent. The day before Date 1, Parent's S status terminated and Parent became a C corporation with Sub 1 becoming a separate C corporation for Federal income tax purposes. On Date 2 of Year 1, Parent purchased all of the stock of Sub 2. For Parent's first short year return as a C corporation, Date 1 through Date 3, Parent included Sub 1 and Sub 2 on its return as members of its consolidated group. Neither Form 851 nor Form 1122 was included with this short year return. Sub 1 and Sub 2 are Parent's sole subsidiaries that are not disregarded as entities separate from their owner for Federal income tax purposes.

### **Representations**

Parent, Sub 1, and Sub 2 have made the following representations:

- (a) Except for the failure to timely file Forms 851 and 1122, Parent, Sub 1, and Sub 2 were eligible to file a consolidated Federal income tax return for the taxable period beginning on Date 1 and ending on Date 3.
- (b) All income and deductions of Sub 1 and Sub 2 were included in the consolidated Federal income tax return timely filed by Parent for the taxable period beginning on Date 1 and ending on Date 3 and for all subsequent taxable years.
- (c) Neither Parent, Sub 1, nor Sub 2, filed a separate Federal income tax return for the taxable period beginning on Date 1 and ending on Date 3 or for any subsequent taxable year.

### **Law**

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

### **Ruling**

Based solely on the information submitted and the representations made, we rule that, under § 1.1502-75(b)(2), Sub 1 and Sub 2 are treated for purposes of § 1.1502-

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75(h)(2) as if they had filed Form 1122 with the consolidated Federal income tax return of Parent for the taxable period beginning on Date 1 and ending on Date 3. Thus, in accordance with the requirements for joining in filing a consolidated return as set forth in § 1501 of the Internal Revenue Code, Sub 1 and Sub 2 are determined to have consented to all consolidated return regulations prescribed under § 1502 prior to the last day prescribed by law for the filing of such return.

### **Caveats**

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. In particular, no opinion was requested and no opinion is expressed concerning Parent's eligibility to be an S corporation either before or after Date 1.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty 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.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) 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.

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.

Sincerely,

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Ken Cohen  
Senior Technician Reviewer, Branch 3  
Office of Associate Chief Counsel (Corporate)

cc: