

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **201144015**
Release Date: 11/4/2011

Third Party Communication: None
Date of Communication: Not Applicable

Index Numbers: 1501.00-00, 1502.00-00,
1502.75-00

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:CORP:B05
PLR-121680-11
Date:
August 03, 2011

TY:

Legend

Parent =

Sub =

Return Preparer =

Date1 =

Date2 =

Date3 =

Date4 =

Dear :

This letter responds to your request, dated May 5, 2011, on behalf of Parent, requesting a ruling that the Commissioner determine, under § 1.1502-75(b)(2) of the Income Tax Regulations, that Sub joined in the making of the initial consolidated Federal income tax return filed by Parent for Parent's taxable year ending Date2. The information submitted in that request and in subsequent correspondence is summarized below.

SUMMARY OF FACTS

Parent acquired all of the stock of Sub on Date1. Prior to its taxable year ending Date2, Parent filed its Federal income tax returns as a standalone corporation.

Parent engaged Return Preparer, its paid tax preparer for prior years, to prepare its return for its taxable year ending Date2 and to provide tax advice to Parent. Parent timely filed a Form 1120 (U.S. Corporation Income Tax Return) that included all of Sub's items of income, gain, deductions, and loss arising after Date1. A Form 851 (Affiliations Schedule) identifying Sub was attached to the return. Parent's return did not have the "consolidated" box checked on the face of the return and it did not have attached a Form 1122 (Authorization and Consent of Subsidiary Corporation to Be Included in a Consolidated Income Tax Return) for Sub. Parent's return included a Form 966 (Corporate Dissolution or Liquidation) schedule that erroneously stated that Sub liquidated during Parent's taxable year ending Date2.

No separate return was filed for Sub for any period after Date1. All of Sub's items of income, gain, deductions, and loss were also included on Parent's Federal Income tax returns for all of its taxable years after its taxable year ending Date2.

On or around Date4, it was discovered that, although Parent owned Sub and two later-acquired subsidiaries, no Form 1122 had been filed in any prior year for Parent's affiliated group of corporations.

The statute of limitations with respect to Parent's tax returns for its taxable years ending Date2 and Date3 have expired.

REPRESENTATIONS

Parent has made the following representations:

- (a) Except for the failure to timely file Forms 1122, Parent and Sub were each eligible to file a consolidated Federal income tax return with Parent as the common parent for the taxable year ending Date2.
- (b) The income, gain, loss, and deductions for Sub for the taxable years ending Date2 and thereafter were included in the Federal income tax return filed by Parent as if Parent were the parent of a consolidated group that included Sub.
- (c) Sub did not file a separate return for any taxable year that included a date after its acquisition by Parent.
- (d) Parent filed an affiliations schedule, Form 851, to include Sub in its tax return for the tax year ending Date2.

APPLICABLE LAW

Section 1.1502-75(a)(1) 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 (in the manner provided in § 1.1502-75(b)). If a group wishes to exercise its privilege of filing a consolidated return, such 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 return.

Section 1.1502-75(b)(1) provides that the consent of a corporation referred to in paragraph (a)(1) of this section shall be made by such corporation joining in the making of the 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(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 joined in the making of a consolidated return by such group. The circumstances, among others, that will be taken into account in making this determination include: (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 in the affiliations schedule, Form 851.

Section 1.1502-75(h)(1) provides that the consolidated return shall be made on Form 1120 for the group by the common parent corporation. The consolidated return, with Form 851 attached, shall be filed with the district director with whom the common parent would have filed a separate return.

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. For the taxable years to which this ruling is relevant, 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 year.

RULING

Based solely on the information submitted and representations made, we rule that Sub will be treated under § 1.1502-75(h)(2) as if it had filed a Form 1122 with Parent's consolidated Federal income tax return for the taxable year ending Date2, and thus Sub will be treated as having joined in the making of the consolidated return for such year. § 1.1502-75(b)(2).

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.

PROCEDURAL STATEMENTS

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) 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,

Alfred C. Bishop,
Jr.

Alfred C. Bishop, Jr.
Branch Chief, Branch 6
Office of Associate Chief Counsel (Corporate)

cc: