

**Internal Revenue Service**

Department of the Treasury  
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October 18, 2011

LEGEND:

Parent =

Sub 1 =

Sub 2 =

Sub 3 =

Sub 4 =

Sub 5 =

Sub 6 =

Sub 7 =

State A =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Year 1 =

Year 2 =

x =

y =

Dear :

This letter is in response to a letter dated May 18, 2011, submitted on behalf of Parent by its authorized representative, requesting that the Commissioner make a determination under §1.1502-75(b) of the Income Tax Regulations that Sub 1, Sub 2, Sub 4, and Sub 5 have joined in the making of the initial consolidated return filed by Parent for the taxable year ending on Date 4. The information submitted in that request is summarized below.

#### SUMMARY OF FACTS

Parent is a State A corporation and a calendar year taxpayer that was formed in Year 1 for the purpose of acquiring Sub 3, an unrelated State A corporation, and Sub 5, an unrelated State A limited partnership. Sub 5's x% limited partnership interest was owned by an unrelated third party, and its y% general partnership interest was owned by Sub 4, a State A corporation. Sub 5 owned all the stock of Sub 6, a State A corporation.

In order to facilitate the acquisition of Sub 3 and Sub 5, Parent formed Sub 1 and Sub 2, both State A corporations. On Date 1, Sub 1 acquired for cash all the outstanding stock

of Sub 3, and Sub 2 acquired for cash and a note all the outstanding stock in Sub 4 and all the limited partnership interests in Sub 5 (the "Year 1 Acquisition"). On Date 2, Sub 5 elected to be classified as a corporation for Federal tax purposes pursuant to §301.7701-3(c).

Following the Year 1 Acquisition, the Parent affiliated group (the "Parent Group") attempted to join in filing a consolidated return for the Year 1 taxable year ending on Date 3. However, there were irregularities with the consolidated Form 1120 filed by Parent. For purposes of this letter, it is assumed that the affiliated group of which Parent is the common parent did not properly constitute a consolidated group for the taxable year ending on Date 3.

In Year 2, Parent formed Sub 7, a State A corporation. For the Year 2 tax year, the members of the Parent Group attempted to join in filing a consolidated return. Items of income, gain, deduction, loss, and credit for Parent and each of Sub 3 through Sub 7 were included on the Form 1120, and each of these subsidiaries was included on the Form 851 attached to the return. However, only Sub 3, Sub 6, and Sub 7 filed Forms 1122 (Sub 4 and Sub 5 did not file Forms 1122).

With regard to Sub 1 and Sub 2, Parent treated each corporation as if it was a disregarded entity, i.e., neither entity (i) filed a separate return; (ii) was included on the Form 851 attached to the return; nor (iii) filed a Form 1122. However, neither had any items of income, gain, deduction, loss, or credit, and thus there was no failure to include any such items on the consolidated return as required by §1.1502-76(b).

## REPRESENTATIONS

Parent has made the following representations:

- (a) Parent and each of Sub 1 through Sub 7 were eligible to file a consolidated Federal income tax return, with Parent as the common parent, for the taxable year ending on Date 4.
- (b) For the taxable year ending on Date 4, but for (i) the failure to file Forms 1122 by Sub 1, Sub 2, Sub 4, and Sub 5, and (ii) the failure to include Sub 1 and Sub 2 on the Form 851 attached to the Year 2 return, Parent and its affiliated subsidiaries would have properly filed a consolidated return that included all of the members of the Parent Group.
- (c) Neither Sub 1 nor Sub 2 had any items of income, gain, deduction, loss, or credit for the taxable year ending on Date 4.
- (d) None of the items for any member of the Parent Group for the taxable year ending on Date 4 was reported on a separate return.

## APPLICABLE LAW

Section 1.1502-75(a)(1) provides, in part, that an affiliated group of corporations that 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 that has been a member of the group during any part of the taxable year for which the consolidated return is to be filed consents to the regulations under §1502, in accordance with §1.1502-75(b). If a group wishes to exercise its privilege of filing a consolidated return, such 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 tax return.

With regard to a corporation's consent for a group's first consolidated year, §1.1502-75(b)(1) provides, as a general rule, that the corporation's consent 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 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 a group wishes to file a consolidated return for a taxable year, a Form 1122 must be executed by each subsidiary. For the taxable year relevant to this ruling request, the group must attach to the consolidated return for the taxable year either executed Forms 1122 or unsigned copies of the completed Forms 1122 (and 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 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 nevertheless has joined in the making of a consolidated return by such group. Factors that the Commissioner will take into account in making this determination include: (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. If the Commissioner determines, under the facts and circumstances, that the member has joined in the making of the consolidated return, such member will be treated for purposes of §1.1502-75(h)(2) as if it had filed a Form 1122 for such year.

Section 1.1502-75(b)(3) provides that if any member has failed to join in the making of a consolidated return under either §1.1502-75(b)(1) or (b)(2), then the tax liability of each member of the group shall be determined on the basis of separate returns unless the common parent corporation establishes to the Commissioner's satisfaction that the failure of such member to join in the making of the consolidated return was due to a mistake of law or fact, or due to inadvertence. In such case, such member shall be

treated as if it had filed a Form 1122 for such year for purposes of §1.1502-75(h)(2), and thus joined in the making of the consolidated return for such year.

### RULING

Based solely on the information submitted and the representations made, we rule that for purposes of §1.1502-75(h)(2), each of Sub 1, Sub 2, Sub 4, and Sub 5 shall be treated as if it had filed a Form 1122 with Parent's consolidated Federal income tax return for the taxable year ending on Date 4, and thus each shall be treated as having joined in the making of the consolidated return for such year (§1.1502-75(b)(2) and (3)).

### PROCEDURAL STATEMENTS

Within 45 days of the date on this letter, Parent shall file amended returns for the taxable year ending on Date 4, and all subsequent years necessary, to include Sub 1 and Sub 2 on Parent's Form 851.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax treatment of any other aspect of any transaction or item discussed or referenced in this letter, or about the tax treatment of any condition existing at the time of, or effects resulting from, any transaction or item that is not specifically covered by the above ruling. Specifically, no opinion is expressed concerning whether the Parent affiliated group constituted a consolidated group for the taxable year ending on Date 3.

The ruling contained in this letter is based upon facts 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 the information, representations, and other data may be required as part of the audit process.

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.

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

Pursuant to the power of attorney on file in this office, a copy of this letter is being sent to your authorized representatives.

Sincerely,

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

cc: