

Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
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PLR-153880-12

Date:
April 18, 2013

LEGEND

Parent =

Sub 1 =

Sub 2 =

Foreign Corp =

State A =

State B =

Country A =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Date 7 =

Date 8 =

Date 9 =

Return Preparer =

Service Center =

Notice =

Accounting Firm =

Dear :

This letter is in response to a letter dated December 18, 2012 submitted on behalf of Parent, requesting that the Commissioner make a determination under § 1.1502-75(b) of the Income Tax Regulations that Sub 1 and Sub 2 joined in the making of the initial consolidated return filed by the Parent Affiliated Group for the taxable year ended Date 5 and joined in the filing of the consolidated returns of Parent Affiliated Group for all taxable years subsequent to taxable year ended Date 5. The information submitted in that request and in a supplement submission dated March 20, 2013 is summarized below.

SUMMARY OF FACTS

Parent is a State A corporation that was incorporated on Date 3 as a wholly-owned subsidiary of Foreign Corp, a company organized under the laws of Country A. Sub 1 is a State B corporation that was incorporated on Date 1. Sub 2 is a State A corporation that was incorporated on Date 2.

Parent was inactive until Date 4, when Foreign Corp contributed all of the outstanding stock of Sub 2 to Parent. Also on Date 4, Parent acquired all of the outstanding stock of Sub 1 from an unrelated third party.

Parent engaged Return Preparer to prepare the Consolidated Return for taxable year ended Date 5 for the Parent Affiliated Group consisting of Parent, Sub 1 and Sub 2. The Consolidated Return for taxable year ended Date 5 filed on behalf of the Parent Affiliated Group checked the "consolidated" box on the face of the return and was prepared on a basis consistent with Parent Affiliated Group having validly elected to join in the making of a consolidated return with the exception that no Form 851 (Affiliations Schedule) and no Forms 1122 (Authorization & Consent of Subsidiary Corporation to be Included in a Consolidated Income Tax Return) were filed with the return.

On Date 6, Parent received a Notice from the Service Center requesting a copy of the Form 851 for the taxable year ended Date 5. After receiving the Notice, Return Preparer prepared the Form 851 for Parent Affiliated Group and faxed a copy of the Form 851 to the Service Center on Date 7.

For taxable year ended Date 5 and the taxable years thereafter, Parent Affiliated Group intended to file consolidated returns. All items of income, gain, deduction, and loss of each member of the Parent Affiliated Group were included on the Consolidated Returns filed for taxable year ended Date 5 and the taxable years thereafter. No separate return was filed for any member of the Parent Affiliated Group for the taxable year ended Date 5 or any taxable year thereafter.

On or about Date 9, Accounting Firm was engaged to perform a due diligence search of Parent Affiliated Group by an unrelated third party that was contemplating the acquisition of the outstanding stock of Foreign Corp. Accounting Firm discovered that Parent Affiliated Group had not attached Forms 851 and 1122 to the Consolidated Return filed for taxable year ended Date 5. Parent Affiliated Group then filed this request.

REPRESENTATIONS

The Parent Affiliated Group has made the following representations:

- (a) The Parent Affiliated Group intended to file a valid election to join in the making of a consolidated return for its taxable year ended Date 5, and relied on Return Preparer to prepare and include any required forms or election statements necessary to make such election with the Consolidated Return for taxable year ended Date 5.

- (b) Except for the failure to timely file Forms 1122 by Sub 1 and Sub 2, the Parent Affiliated Group was eligible to file a consolidated U.S. federal income tax return for its taxable year ended Date 5.
- (c) All of the items of income, gain, loss and deduction of each member of the Parent Affiliated Group were included in the timely filed Consolidated Return for taxable year ended Date 5.
- (d) No member of the Parent Affiliated Group filed a separate U.S. federal income tax return for the taxable year ended Date 5, and none of the items of any member of the Parent Affiliated Group for the taxable year ended Date 5 were reported on a separate return (within the meaning of Treas. Reg. § 1.1502-1(e)).
- (e) The members of the Parent Affiliated Group were included on the Form 851 filed with the Service Center in response to the Notice.
- (f) The Internal Revenue Service did not discover the failure of the Parent Affiliated Group to make a valid election to join in the making of a consolidated return for its taxable year ended Date 5.
- (g) The Parent Affiliated Group is not seeking to alter a return position for which an accuracy-related penalty has been or could be imposed under Section 6662.
- (h) The Parent Affiliated Group is not using hindsight in requesting this relief. No specific facts have changed since the original due date for making the Consolidated Return Election that makes the Consolidated Return Election advantageous.
- (i) The requested relief will not result in a lower tax liability for any affected taxpayer, in the aggregate, for all taxable years affected by the Consolidated Return Election than they would have had if the Consolidated Return Election had been timely made.
- (j) Except for the taxable years ended Date 5 and Date 8, the period of limitations on assessment under Section 6501(a) has not expired for any member of the Parent Affiliated Group for the taxable year in which the Consolidated Return Election should have been filed, or for any taxable year(s) that would have been affected by the Consolidated Return Election had it been timely filed.

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 taxable years 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 determine 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 Treas. Reg. § 1.1502-75(h)(2) as if it had filed a Form 1122 for such year.

RULING

Based solely on the information submitted and representations made, we rule that Sub 1 and Sub 2 are treated, under Treas. Reg. § 1.1502-75(h)(2), as if they had filed Forms 1122 with the consolidated Federal income tax return filed by the Parent Affiliated Group for taxable year ended Date 5. Treas. Reg. § 1.1502-75(b)(2).

PROCEDURAL STATEMENTS

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.

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) of the Code 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 representative.

Sincerely,

Mark S. Jennings
Branch Chief, Branch 1
(Corporate)