

**Office of Chief Counsel
Internal Revenue Service
Memorandum**

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subject:

This Chief Counsel Advice responds to your request for assistance dated August 13, 2018. This advice may not be used or cited as precedent.

LEGEND

Parent =

New Parent =

Merger Sub =

LLC 1 =

Sub 1 =
=
=
=
Date 1 =
Date 2 =
=
=
=
Date 6 =
Date 7 =
Date 8 =

ISSUES

Group remain in existence after the transactions described under Treas. Reg. § 1.1502-75(d), or did the Parent Group’s taxable year terminate? did the Parent

CONCLUSIONS

Group remained in existence with New Parent as the common parent of the continuing Parent Group. The Parent Group’s taxable year did not terminate as a result of the transactions at issue but continued until the year closed on Date 8. the Parent

FACTS

On Date 1, Parent was the common parent of an affiliated group of corporations filing a consolidated return (“the Parent Group”).¹ On Date 1, Parent formed New

¹ The Parent Group included a large number of members that are not identified in this advice and whose direct or indirect ownership by Parent remained unchanged through the course of the transactions described herein.

Parent, a Country A entity that made an initial election to be treated as an entity disregarded as separate from its owner for federal income tax purposes (a “DRE”) at the time of its formation.² Prior to Date 2, New Parent formed Merger Sub; for federal income tax purposes, Parent was treated as directly owning Merger Sub.

On Date 2, Parent, New Parent, and Merger Sub entered into a
(the “Agreement”) with Third Party

New Parent elected under Treas. Reg. § 301.7701-3(c)(1)(i) to be treated as an association for federal income tax purposes, effective Date 6 (the “New Parent Formation”).

LLC 1 elected under Treas. Reg. § 301.7701-3(c)(1)(i) to be treated as an association for federal income tax purposes (“Sub 1”), effective Date 7 (the “Sub 1 Formation”).

² Certain transactions that were disregarded for federal income tax purposes and certain transactions that were regarded for federal income tax purposes but that are not germane to this advice are omitted.

LAW

Section 1504(a)(1) provides that the term “affiliated group” means one or more chains of includible corporations connected through stock ownership with a common parent corporation that is an includible corporation, but only if—(i) the common parent owns directly stock meeting the requirements of § 1504(a)(2) in at least one of the other includible corporations, and (ii) stock meeting the requirements of § 1504(a)(2) in each of the includible corporations (except the common parent) is owned directly by one or more of the other includible corporations.

Section 1504(a)(2) provides that the ownership of stock of any corporation meets the affiliation requirements of § 1504(a)(2) if it possesses at least 80 percent of the total voting power of the stock of such corporation, and has a value equal to at least 80 percent of the total value of the stock of such corporation.

Section 1504(a)(5)(E) of the Code provides that transfers of stock within an affiliated group shall not be taken into account in determining whether a corporation ceases to be a member of an affiliated group.

Section 1504(b) defines includible corporations to mean any corporation except for certain types of corporations such as foreign corporations.

Treas. Reg. § 1.1502-75(a)(2) provides that a group that filed or was required to file a consolidated return for the immediately preceding taxable year is required to file a consolidated return for the taxable year unless it has an election to discontinue filing consolidated returns under § 1.1502-75(c).

Treas. Reg. § 1.1502-75(d)(1) provides that a consolidated group remains in existence for a tax year if the common parent remains as the common parent and at least one subsidiary that was affiliated with it at the end of the prior year remains affiliated with it at the beginning of the year, whether or not one or more corporations have ceased to be subsidiaries at any time after the group was formed.

Treas. Reg. § 1.1502-75(d)(2)(ii) provides, in part, that the consolidated group shall be considered as remaining in existence notwithstanding that the common parent is no longer in existence if the members of the affiliated group succeed to and become the owners of substantially all of the assets of such former parent and there remains one or more chains of includible corporations connected through stock ownership with a common parent corporation that is an includible corporation and that was a member of the group prior to the date such former parent ceases to exist.

Treas. Reg. § 1.1502-75(d)(3) (the “reverse acquisition rule”) provides, in part, that when a corporation (the first corporation) or any member of a group of which the first corporation is the common parent acquires stock of another corporation (the second corporation) and as a result the second corporation would become a member of the group of which the first corporation is common parent in exchange for stock of the first corporation and the stockholders (immediately before the acquisition) of the second corporation, as a result of owning stock of the second corporation, own (immediately after the acquisition) more than 50% of the fair market value of the stock of the first corporation, then any group of which the second corporation was the common parent immediately before the acquisition will be treated as remaining in existence with the first corporation becoming the common parent of the group.

Treas. Reg. § 1.1502-76(b)(1)(ii)(A)(1) (the “end-of-the-day rule”) provides, in relevant part, that if a corporation becomes or ceases to be a member during a consolidated return year, it becomes or ceases to be a member at the end of the day on which its status as a member changes, and its tax year ends for all Federal income tax purposes at the end of that day.

Treas. Reg. § 301.7701-3(g)(3)(i) provides that an election under Treas. Reg. 301-7701-3(c)(1)(i) that changes the classification of an eligible entity for federal tax purposes is treated as occurring at the start of the day for which the election is effective.

ANALYSIS

New Parent Formation

Pursuant to Treas. Reg. § 301.7701-3(g)(3)(i), the New Parent Formation is treated as being effective at the beginning of the day on Date 6.

A member's status changes, if at all, at the end of the day under Treas. Reg. § 1.1502-76(b)(1)(ii)(A)(1). Accordingly, a transitory departure of a member during a day on which it will still be a member at the end of the day will not change the member's status.³

A member's status changes, if at all, at the end of the day under Treas. Reg. § 1.1502-76(b)(1)(ii)(A)(1). Accordingly, a transitory departure of a member during a

³ Proposed regulations published in 80 F.R. 12097 (March 6, 2015) that would revise Treas. Reg. 1.1502-76 are not applicable to these transactions.

day on which it will still be a member at the end of the day will not change the member's status.

Under Treas. Reg. § 1.1502-75(d)(1), a consolidated group remains in existence when the common parent remains as common parent and a subsidiary that was affiliated with it at the end of the prior year remains affiliated with it at the beginning of the year.

Treas. Reg. § 1.1502-75(d)(2)(ii) provides that a consolidated group will remain in existence notwithstanding that the common parent is no longer in existence if the members of the affiliated group succeed to or become the owners of substantially all of the assets of the former parent and there remains one or more chains of includible corporations connected through stock ownership with a common parent corporation that is an includible corporation and that was a member of the group before the former common parent ceased to exist.

Summary

Taking into account the application of the consolidated return rules, the Parent Group remained in existence after the described transactions.

CASE DEVELOPMENT, HAZARDS AND OTHER CONSIDERATIONS

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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Please call 202-317-5024 if you have any further questions.

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By: _____
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