

Department of the Treasury
Washington, DC 20224

Internal Revenue Service

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Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact: , ID No.

Telephone:

Refer Reply To:

Date:
May 3, 2021

Legend

Taxpayer 1 (Parent) =

Taxpayer 2 (Sub 1) =

Taxpayer 3 (Sub 2) =

Taxpayer 4 (Sub 3) =

Taxpayer 5 (Sub 4) =

Determination Letter Under Treas. Reg. § 1.1502-75(b)

Date1=
Date2=
Date3=
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Dear :

This letter responds to letters dated Date 1 and Date 2 submitted on behalf of Parent, Sub 1, Sub 2, Sub 3, and Sub 4 (the "affiliated group" for purposes of this letter and to the extent these entities meet the definition provided by IRC § 1504(a)), requesting that the Commissioner make a determination regarding: (1) the failure of Parent's wholly-owned subsidiary Sub 1 to have consented to the filing of a consolidated return with Parent pursuant to, and in the manner provided by, Treas. Reg. §§ 1.1502-75(a)(1), 1.1502-75(b)(1) and 1.1502-75(h)(2) for the taxable year ended Date 3; (2) the failure of Parent's wholly-owned subsidiary Sub 2 to have consented to the filing of a consolidated return with Parent pursuant to, and in the manner provided by, Treas. Reg. §§ 1.1502-75(a)(1), 1.1502-75(b)(1) and 1.1502-75(h)(2) for the taxable year ended Date 4; (3) the failure of Parent's wholly-owned subsidiary Sub 3 to have consented to the filing of a consolidated return with Parent pursuant to, and in the manner provided by, Treas. Reg. §§ 1.1502-75(a)(1), 1.1502-75(b)(1) and 1.1502-75(h)(2) for the taxable year ended Date 5; and (4) the failure of Parent's wholly-owned subsidiary Sub 4 to have consented to the filing of a consolidated return with Parent pursuant to, and in the manner provided by, Treas. Reg. §§ 1.1502-75(a)(1), 1.1502-75(b)(1) and 1.1502-75(h)(2) for the taxable year ended Date 5.

The determination contained in this letter is based upon facts and representations submitted by the taxpayers and accompanied by a penalties of perjury statement executed by an appropriate party.

SUMMARY OF FACTS

Sub 1 was incorporated as a wholly-owned subsidiary of Parent on Date 6, Sub 2 was incorporated as a wholly-owned subsidiary of Parent on Date 7, Sub 3 was incorporated as a wholly-owned subsidiary of Parent on Date 8, and Sub 4 was incorporated as a wholly-owned subsidiary of Parent on Date 9. For the entire time that Sub 1, Sub 2, Sub 3, and Sub 4 have been in existence, Parent has been the sole shareholder, and in sole control of each of them.

Parent and these subsidiaries did not satisfy the requirements for filing consolidated returns when Parent filed its U.S. income tax returns for the taxable years ended Date 3, Date 4, or Date 5. In particular, Parent did not attach a Form 851, *Affiliations Schedule*, it did not attach a Form 1122, *Authorization and Consent of Subsidiary To Be Included in a Consolidated Income Tax Return*, for the relevant year a subsidiary intended to consent to join in the making of a consolidated return, and it did not check the "consolidated return" box on the face of any such return. Sub 1, Sub 2, Sub 3, and Sub 4 were not specifically identified or referenced on any such return.¹

Sub 1, Sub 2, Sub 3, and Sub 4 have never filed a separate U.S. income tax return for any taxable year.

At the time the affiliated group filed the request letters dated Date 1 and Date 2, the identical issue was not under examination or consideration or in litigation.

REPRESENTATIONS

Parent represents that its U.S. income tax returns for its taxable year ended Date 3 and all subsequent years contained all of the income, deductions, assets and liabilities of Sub 1. Parent represents that its U.S. income tax returns for its taxable year ended Date 4 and all subsequent years contained all of the income, deductions, assets and liabilities of Sub 2. Parent also represents that its U.S. income tax returns for its taxable year ended Date 5 and all subsequent years contained all of the income, deductions, assets and liabilities of Sub 3 and Sub 4.

¹ Parent's U.S. income tax return for its taxable year ended Date 10 included Form 851, *Affiliations Schedule*, had the "consolidated return" box on page 1 checked, and specifically identified and referenced Sub 1, Sub 2, Sub 3 and Sub 4.

LAW

Internal Revenue Code (IRC) § 1501 provides, in part, that "An affiliated group of corporations shall . . . have the privilege of making a consolidated return with respect to the income tax imposed by chapter 1 for the taxable year in lieu of separate returns. The making of a consolidated return shall be upon the condition that all corporations which at any time during the taxable year have been members of the affiliated group consent to all the consolidated return regulations prescribed under section 1502 prior to the last day prescribed by law for the filing of such return. The making of a consolidated return shall be considered as such consent. . . ."

IRC § 1504(a) defines the term "affiliated group" as follows:

(a) Affiliated group defined

For purposes of this subtitle -

(1) In general

The term "affiliated group" means -

(A) 1 or more chains of includible corporations connected through stock ownership with a common parent corporation which is an includible corporation, but only if -

(B) (i) the common parent owns directly stock meeting the requirements of paragraph (2) in at least 1 of the other includible corporations, and

(ii) stock meeting the requirements of paragraph (2) in each of the includible corporations (except the common parent) is owned directly by 1 or more of the other includible corporations.

(2) 80-percent voting and value test

The ownership of stock of any corporation meets the requirements of this paragraph if it -

(A) possesses at least 80 percent of the total voting power of the stock of such corporation, and

(B) has a value equal to at least 80 percent of the total value of the stock of such corporation.

Treas. Reg. § 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 paragraph (b) of this section) to the regulations under section 1502. . . ."

Treas. Reg. § 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

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in the making of a consolidated return if it files a Form 1122 in the manner specified in paragraph (h)(2) of this section.”

Treas. Reg. § 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 following circumstances, among others, will be taken into account in making this determination:

- (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 tax year; and
- (iii) Whether or not the member was included in the affiliations schedule, Form 851.

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 Treas. Reg. § 1502-75(h)(2).

Treas. Reg. § 1.1502-75(b)(3) provides that “If any member has failed to join in the making of a consolidated return under either subparagraph (1) or (2) of this paragraph, 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 satisfaction of the Commissioner 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 to inadvertence. In such case, such member shall be treated as if it had filed a Form 1122 for such year for purposes of paragraph (h)(2) of this section, and thus joined in the making of the consolidated return for such year.”

Treas. Reg. § 1.1502-75(h)(2) provides that “If, under the provisions of paragraph (a)(1) of this section, a group wishes to file a consolidated return for a taxable year, then a Form 1122 (“Authorization and Consent of Subsidiary Corporation To Be Included in a Consolidated Income Tax Return”) must be executed by each subsidiary. . . . For taxable years beginning after December 31, 2002, the group must attach either executed Forms 1122 or unsigned copies of the completed Forms 1122 to the consolidated return. . . . 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.”

Rev. Proc. 2014-24, 2014-13 I.R.B. 879, allows an affiliated group that satisfies certain requirements to obtain an automatic determination to treat a subsidiary member of the affiliated group as if it filed a Form 1122, even though it failed to do so. Rev. Proc. 2014-24, Section 1.03 provides that if an affiliated group cannot satisfy such

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requirements, a determination by the Commissioner under Treas. Reg. § 1.1502-75(b) is available only pursuant to a determination letter issued by a Director.

In this case, the affiliated group does not satisfy the requirements to obtain automatic relief under Rev. Proc. 2014-24 to treat Sub 1, Sub 2, Sub 3 or Sub 4 as having filed Form 1122 and thus as having joined in the making of a consolidated return by the affiliated group. However, the Service may act on behalf of the Commissioner to treat Sub 1, Sub 2, Sub 3 and Sub 4 as if each had filed Form 1122 for purposes of Treas. Reg. § 1.1502-75(h)(2) under the provisions of Treas. Reg. §§ 1.1502-75(b)(2) or (3).

DETERMINATION

Based on the information submitted and the representations made in the letters dated Date 1 and Date 2, we have determined that Treas. Reg. § 1.1502-75(b)(2) can be applied in this case. Accordingly, Sub 1, Sub 2, Sub 3, and Sub 4 shall each be treated as if each had filed a Form 1122 for purposes of Treas. Reg. § 1.1502-75(h)(2), as follows:

- Sub 1 shall be treated as if it had filed a Form 1122 for the taxable year ended Date 3;
- Sub 2 shall be treated as if it had filed a Form 1122 for the taxable year ended Date 4;
- Sub 3 shall be treated as if it had filed a Form 1122 for the taxable year ended Date 5; and
- Sub 4 shall be treated as if it had filed a Form 1122 for the taxable year ended Date 5.

Parent's Forms 1120 for taxable years prior to the taxable year ended Date 10 failed to reference Sub 1, Sub 2, Sub 3, or Sub 4 on the Form 851 or reference them in any other way. Nonetheless, all income and deductions of Sub 1, Sub 2, Sub 3, and Sub 4 have been included in Parent's Forms 1120. None of these subsidiaries ever filed separate returns. Accordingly, based solely on facts and representations submitted in the letters dated Date 1 and Date 2, the Service shall treat each subsidiary as if it had filed a Form 1122 as described in the preceding paragraph, and thus joined in the making of a consolidated return by the affiliated group, notwithstanding that they failed to actually file Form 1122.

CAVEATS

Except as expressly provided herein, no opinion is expressed or implied concerning the U.S. income tax consequences of any 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 determination.

The determination contained in this letter is based upon information and representations submitted by the taxpayers and accompanied by a penalty of perjury declaration executed by an appropriate party.

PROCEDURAL MATTERS

This determination is directed only to the taxpayers who requested it. IRC § 6110(k)(3) provides that it may not be used or cited as precedent.

This office will associate a copy of this determination letter with the Parent's U.S. income tax returns. A copy of this determination letter should be kept in the Parent's permanent records.

A copy of this determination 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 returns that provides the date and control number of the determination letter.

Sincerely,

By: 

Title: Director Field Operations (Mid-Atlantic)