

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **202537001**

Release Date: 9/12/2025

Index Number: 1502.75-00, 9100.00-00,
9100.20-00

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:CORP:B5
PLR-100284-25

Date:
June 16, 2025

Legend

Parent =

Sub =

Date 1 =

Date 2 =

Firm =

Dear :

This letter responds to a letter dated December 20, 2024, submitted on behalf of Parent, requesting an extension of time under §301.9100-3 of the Procedure and Administration Regulations to file an election. Parent is requesting an extension of time for Parent and Sub to make an election under §1.1502-75(a)(1) of the Income Tax Regulations to file a consolidated federal income tax return, with Parent as the common parent, for the taxable year ending on Date 1 (the "Election"). Alternatively, Parent asserts that Parent and Sub substantially complied with the requirements to make the Election. The material information submitted for consideration is summarized below.

Prior to Date 2, each of Parent and Sub filed separate returns on a calendar year basis, and neither was a member of an affiliated group within the meaning of section 1504. On Date 2, Parent acquired all the outstanding stock of Sub in a transaction that is represented to qualify as a reverse acquisition under §1.1502-75(d)(3) (Parent and Sub

are sometimes hereinafter referred to as the “Parent-Sub Affiliated Group”). Following the acquisition, Parent and Sub decided to file a consolidated federal income tax return and engaged Firm for assistance with their income tax compliance obligations for their pre- and post-acquisition years. Parent and Sub informed Firm of their intent to file a consolidated return for the taxable year ending on Date 1.

For the taxable year ending on Date 1, Firm prepared and timely filed a Form 7004, *Application for Automatic Extension of Time to File Certain Business Income Tax, Information, and Other Returns*, for Parent and Sub. In the section at the top of the Form 7004 for the name, address, and identifying number of the entity filing the form, the name listed was “[Sub] and subsidiaries”, the identifying number was Sub’s EIN, and the address listed was Sub’s and Parent’s shared mailing address. The box for line 3 of Part II of the Form 7004 was checked to indicate that the filer was a corporation and was the common parent of a group that intended to file a consolidated return. A statement attached to the Form 7004, listing the members of the affiliated group, provided Parent’s name, Parent’s mailing address (which was shared with Sub), and Parent’s EIN.

Prior to the extended due date requested by the foregoing Form 7004, Parent and Sub filed a federal income tax return (a Form 1120, *U.S. Corporation Income Tax Return*) on a consolidated basis for the taxable year ending on Date 1. In the section at the top of the Form 1120 for the name, address, and identifying number of the entity filing the form, the name listed was “[Sub] and subsidiaries”, the identifying number was Sub’s EIN, and the address listed was Sub and Parent’s shared mailing address. In addition, the return: (1) checked box 1a of Item A to indicate it was a consolidated return; (2) included a Form 851, *Affiliations Schedule*, that listed Sub as the common parent, Sub’s EIN, and Sub’s shared mailing address with Parent, and also listed Parent as the subsidiary corporation, Parent’s EIN, and Parent’s shared mailing address with Sub; (3) included two Forms 1122, *Authorization and Consent of Subsidiary Corporation To Be Included in a Consolidated Income Tax Return*, one for each of Parent and Sub; and (4) was signed by the person who served as the Chief Financial Officer of both Sub and Parent (and as such would have signed any return filed by Parent). Because Parent and Sub each incurred a loss for the taxable year ending on Date 1, the return reported a loss for taxable income (and zero amount of tax owed).

If Parent and Sub substantially complied with the requirements to make the Election, an extension of time under §301.9100-3 to make the Election would not be necessary.

Whether Parent and Sub substantially complied with the requirements to make the Election depends in part on whether the aforementioned Form 7004 constituted a valid extension of the due date for the Parent-Sub Affiliated Group to file a consolidated return for the taxable year ending on Date 1. See §1.1502-75(a), infra.

Section 6012(a)(2) requires the filing of income tax returns by corporations subject to tax under subtitle A. Section 6072(a) provides, in part, that returns under section 6012

made on the basis of a calendar year must be filed on or before the 15th day of April following the close of the calendar year.

Pursuant to section 6081(b), a corporation that satisfies certain requirements will be allowed an automatic extension of time to file its income tax return. Section 1.6081-3(a) provides that such requirements are: (1) an application must be submitted on Form 7004, or in any other manner prescribed by the Commissioner; (2) the application must be filed on or before the date prescribed for the filing of the return of the corporation; (3) the corporation (or affiliated group of corporations filing a consolidated return) must remit the amount of the properly estimated unpaid tax liability on or before the date prescribed for payment; and (4) the application must include a statement listing the name and address of each member of the affiliated group if such group will file a consolidated return. Section 1.6081-3(a) further provides that upon the timely filing of Form 7004, the extension of time to file shall be considered as granted to the affiliated group for the filing of its consolidated return or for the filing of each member's separate return.

Based on the facts, representations, and information submitted, we conclude that the Form 7004 filed by Parent and Sub satisfied the requirements of §1.6081-3(a) and extended the due date for the Parent-Sub Affiliated Group to file a consolidated return for the taxable year ending on Date 1.

Section 1501 provides that an affiliated group of corporations shall have the privilege of making a consolidated return with respect to the income tax liability imposed by Chapter 1 for the taxable year in lieu of filing 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.

Section 1.1502-75(a)(1) states 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 filed consents (in the manner provided in §1.1502-75(b)) to the regulations under section 1502. 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) explains that the consent of a corporation referred to in §1.1502-75(a)(1) is 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(h) provides the method for filing a consolidated return and forms. 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, and 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 §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. Section 1.1502-75(h)(3) provides that each return or form required to be made or prepared by a corporation must be executed by the person authorized under section 6062 to execute returns of separate corporations.

Under the doctrine of substantial compliance, if a taxpayer has not complied with all of the requirements of an election provision of the statute or regulations, an election may nevertheless be deemed to have been made by the taxpayer if the requirements that have not been satisfied do not relate to the substance or essence of the applicable election. See Wilkinson v. Commissioner, T.C. Memo. 1993-463 (1993). Factors that courts have used in determining whether strict compliance as opposed to substantial compliance is required include whether the taxpayer's failure to comply fully defeats the purpose of the statute; whether the taxpayer attempts to benefit from hindsight by adopting a position inconsistent with his original action or omission; whether the Commissioner is prejudiced by the untimely election; whether the sanction imposed on the taxpayer for the failure is excessive and out of proportion to the default; and whether the regulation provided with detailed specificity the manner in which an election was to be made. American Air Filter Co. v. Commissioner, 81 T.C. 709, 719-720 (1983).

Based on the facts, representations, and information submitted, we conclude that the Parent-Sub Affiliated Group substantially complied with the requirements to elect to file a consolidated return for the taxable year ending on Date 1.

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. Except as provided herein, no opinion is expressed or implied concerning the federal income tax consequences of the transaction referenced in this letter.

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.

In accordance with the Power of Attorney on file with this office, copies of this letter are being sent to your authorized representatives.

PLR-100284-25

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Sincerely,

Thomas I. Russell
Senior Technician Reviewer, Branch 4
Office of Associate Chief Counsel (Corporate)

cc: