

**Internal Revenue Service
Large Business & International
Western Compliance Practice Area**

Department of the Treasury
Washington, DC 20224

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Person To Contact:

Telephone Number:

In Re:

Date:
July 18, 2025

Legend:

Parent =

Sub 1 =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Dear :

This letter responds to correspondence dated **Date 1** submitted on behalf of **Parent**, and **Sub 1** (the "Parent Affiliated Group" for purposes of this letter and to the extent these entities meet the definition provided by Internal Revenue Code ("IRC") section 1504(a)), requesting that the Commissioner make a determination regarding 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), (b)(1) and (h)(2) for the taxable year ending on **Date 4**.

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

Parent was formed on **Date 2**. Effective **Date 2**: (i) **Parent** elected to be taxed as an S corporation (within the meaning of IRC section 1361(a)); (ii) owners of **Sub 1** (a pre-existing entity taxed as an S corporation) contributed all their shares of **Sub 1** to **Parent** in exchange for the same class and amounts of shares in **Parent**; and (iii) **Parent** elected to treat **Sub 1** as a qualified subchapter S subsidiary (within the meaning of IRC section 1361(b)(3)(B)). Later that same year, and effective at the end of **Date 3**, **Parent** revoked its S corporation election.

As a result of revoking its S election, **Parent** filed its S corporation return for the period beginning on **Date 2** and ending on **Date 3**. **Parent** also filed a form 1120 for the short period ending **Date 4**. **Parent** filed its form 1120 mistaking **Sub 1** as a disregarded entity for tax purposes.

On its tax return for the year ending on **Date 4**: (i) **Parent** did not check the "consolidated return" box; and (ii) **Parent** did not attach either a Form 851 ("Affiliations Schedule") or a Form 1122 ("Authorization and Consent of Subsidiary Corporation to be Included in a Consolidated Income Tax Return").

Nevertheless, **Parent** reported any and all items of income, gain, deduction, and loss of **Sub 1** on **Parent's** tax return for its taxable year ending on **Date 4** and on all of **Parent's** subsequent tax returns to date. **Sub 1** has not filed a separate tax return since becoming affiliated with **Parent** after **Date 3**. However, on the return for the tax year ending on **Date 5**, **Sub 1** was erroneously identified on Form 1120, Schedule K, question 5, as a 100-percent owned domestic corporation not included on Form 851.

In this case, the Parent Affiliated Group does not satisfy the requirements to obtain automatic relief under Rev. Proc. 2014-24. Consequently, **Parent** submitted a determination letter request.

REPRESENTATIONS

Parent represents that its tax return for the taxable year ending on **Date 4** and its tax returns for all subsequent tax years to date contained any and all the income and deductions of **Sub 1**.

Sub 1 has not filed a separate tax return since becoming affiliated with **Parent** after **Date 3**.

For the taxable year ending on **Date 4**, **Sub 1** intended to consent to join in the making of a consolidated return.

LAW

IRC section 1501 provides, in relevant part:

An affiliated group of corporations shall, subject to the provisions of this chapter, 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 section 1504(a) provides that the term "affiliated group" means: one or more chains of includible corporations connected through stock ownership with a common Parent corporation which is an includible corporation, but only if (i) the common Parent owns directly 80 percent of the stock in at least one of the other includible corporations, and (ii) 80 percent of the stock in each of the includible corporations (except the common Parent) is owned directly by one or more of the other includible corporations.

Treas. Reg. § 1.1502-75(a) provides:

(a) Privilege of filing consolidated returns—(1) Exercise of privilege for first consolidated return year. 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. 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. Such consolidated return may not be withdrawn after such last day (but the group may change the basis of its return at any time prior to such last day).

(2) Continued filing requirement. A group which 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 paragraph (c) of this section.

Treas. Reg. § 1.1502-75(b) provides:

(b) How consent for first consolidated year exercised—(1) General rule. 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 in the making of such return for such year if it files a Form 1122 in the manner specified in paragraph (h)(2) of this section.

(2) Consent under facts and circumstances—(i) In general. 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 taxable year; and

(iii) Whether or not the member was included in the affiliations schedule, Form 851.

Treatment of a member. 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 paragraph (h)(2) of this section.

(3) Failure to consent due to mistake. 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(d)(1) provides, in relevant part:

(d) When a group remains in existence—(1) General rule. A 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(h) provides, in relevant part:

(h) Method of filing return and forms—(1) Consolidated return made by common Parent or agent. The consolidated return shall be made on Form 1120 *U.S. Corporation Income Tax Return* (or any successor form) for the group by the common Parent....

(2) Filing of Form 1122 for first year. 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. . . . 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. Section 1.03 of Rev. Proc. 2014-24 provides that if an affiliated group cannot satisfy such 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.

DETERMINATION

Based solely on the information submitted and the representations made in the determination letter request, it is determined that Treas. Reg. § 1.1502-75(b)(2) can be applied in this case. Accordingly, **Sub 1** shall be treated as if it had filed a Form 1122 in the manner specified in Treas. Reg. § 1.1502-75(h)(2) for the taxable year ending on **Date 4**, and the Parent Affiliated Group shall be treated as satisfying the requirements for filing a consolidated return for the taxable year ending on **Date 4**.

Parent must file an amended return for each and any open year to both check the "consolidated return" box on the face of the tax return and attach a Form 851, Affiliations Schedule, as necessary.

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. I.R.C. § 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,

Acting Director of Field Operations (WCPA – West)