



LARGE BUSINESS AND
INTERNATIONAL DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, DC 20224

Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person to Contact:
***, ID No. ***

Telephone:

Refer Reply To:

Date:

Legend:

Taxpayer 1 (Parent) = ***

Taxpayer 2 (Sub 1) = ***

Taxpayer 3 (Sub 2) = ***

Date 1 = ***

Date 2 = ***

Date 3 = ***

Date 4 = ***

Date 5 = ***

Date 6 = ***

Date 7 = ***

Return Preparer = ***

Accounting Firm = ***

Dear ***:

This letter responds to the letter dated Date 1 submitted on behalf of Parent and each of Sub 1 and Sub 2 (the "affiliated group" for purposes of this letter and to the extent these

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entities meet the definition provided by Internal Revenue Code ("IRC") §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), 1.1502-75(b)(1) and 1.1502-75(h)(2) for the taxable year ending Date 2 and for all taxable years ending thereafter.

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, and upon the information submitted and representations made in the emails from your representatives dated Date 3, and Date 4.

SUMMARY OF FACTS

Parent and Sub 1, a wholly owned property and casualty insurance company filed US corporation tax returns on a separate company basis prior to Date 5.

On Date 6, Parent acquired 100% of the stock of Sub 2. Parent decided to file and engaged Accounting Firm to prepare the Consolidated Tax Return for the taxable year ending Date 2.

On Date 7, a date subsequent to Date 6, Parent timely filed an initial consolidated return for the taxable year ending Date 2. Parent filed this return on behalf of its affiliated group, including Sub 2. However, Sub 1's items of income, gain, deduction, loss, and credit were not included in this return, nor was a Form 1122 ("Authorization and Consent of Subsidiary Corporation to be Included in a Consolidated Income Tax Return") included in this return for Sub 1, and Sub 1 was not included in the Form 851 ("Affiliations Schedule") attached to this return.

Instead, due to a mistake of law concerning the inclusion of a nonlife insurance corporation in a consolidated return, a separate return was filed for Sub 1 for the taxable year ending Date 2. Return Preparer from Accounting Firm excluded Sub 1 from the consolidated tax return because *** believed insurance companies had to file on a separate company basis.

As a result of this mistake, the requirements for filing a valid consolidated return for the taxable year ending Date 2 were not satisfied.

REPRESENTATIONS

Parent, on behalf of its affiliate group, makes the following representations:

1. No return for the taxable year in which the consent and the inclusion of Sub 1 in Parent's consolidated return should have been made (or any taxable years that would have been affected by such failures had they been timely made) is being

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examined by a Director, or is being considered by an appeals office or a federal court;

2. The granting of the relief will not result in the Parent consolidated group having a lower tax liability in the aggregate for all years to which the relief applies than it would have had if the consolidated return year was properly filed including Sub 1;
3. The affiliated group has not used hindsight to request relief;
4. Sub 1. is and has been at all times an includible corporation under IRC § 1504(a) and (b).
5. No specific facts have changed since the due date for filing a valid consolidated return for the taxable year ending Date 2 that make the inclusion of Sub 1 in the consolidated return for the affiliated group more advantageous to the affiliated group than if Sub 1 had been so included; and the amount of tax liability reported as owing on Parent's consolidated return for its taxable year ending Date 2 was not less than what the tax liability on Parent's consolidated return would have been had Sub 1 been included in such return.

LAW

IRC § 1501 provides 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)(1) and (2) define the term "affiliated group" as 1 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 directly owns stock with at least 80 percent of the total voting power and 80 percent of the total value of at least 1 of the other includible corporations, and
- (ii) Stock with at least 80 percent of the total voting power and 80 percent of the total value of each of the includible corporations (except the common parent) is directly owned by 1 or more of the other includible corporations.

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

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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 IRC §1502. If a group wishes to exercise its privilege of filing a consolidated return, such consolidated return must be filed no later than the last day prescribed by law (including extensions of time) for filing the common parent's return.

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 taxable 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 paragraph (h)(2) of this section.

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 that 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. . . 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 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 as having filed Form 1122 and thus as having joined in the making of a consolidated return by the affiliated group for the

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taxable year ending Date 2. However, the Service may act on behalf of the Commissioner to treat Sub 1 as if it had filed such Form 1122 and joined in the making of a consolidated return with and by Parent (and with and by the affiliate group) beginning with the taxable year ending Date 2 and for all taxable years ending thereafter 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 letter dated Date 1, and upon the information submitted and representations made in the emails from your representatives dated Date 3, and Date 4, we have determined that Treas. Reg. § 1.1502-75(b)(3) can be applied in this case.

Accordingly, Sub 1 shall be treated as if it had filed a Form 1122 for purposes of Treas. Reg. § 1.1502-75(h)(2) and thus joined in the making of a consolidated return by the Parent affiliated group beginning with the taxable year ending Date 2, notwithstanding that it failed to actually file Form 1122.

Both the Parent and Sub 1 shall amend their respective returns accordingly, for their respective years ended on Date 2, and any subsequent returns filed by the Parent and Sub 1 as necessary. (Treas. Reg. § 1.1502-75(b)(3)).

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 their representatives 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

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requirement by attaching a statement to their returns that provides the date of the determination letter.

Sincerely,

By: Deborah A. Mullen
Title: Director, Field Operations (North Atlantic)

Cc: ***
