

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

Department of the Treasury
Washington, DC 20224

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Third Party Communication: None
Date of Communication: N/A

In Re:

Person To Contact:

Telephone Number:

Date:
July 9, 2025

Legend:

Parent =
Parent 2 =
Common Parent =
Sub 1 =
Sub 2 =
Accounting Firm 1 =
Accounting Firm 2 =
Accounting Firm 3 =

Date 1 =
Date 2 =
Date 3 =
Date 4 =
Date 5 =
Date 6 =
Date 7 =
Date 8 =
Date 9 =

Dear :

This letter responds to a letter dated **Date 1**, submitted on behalf of **Parent** and **Sub 2** (together, the "Parent Affiliated Group" for purposes of this letter and to the extent these entities meet the definition provided by I.R.C. § 1504(a)), requesting that the Commissioner make a determination regarding the failure of **Parent** and **Sub 2** to have timely joined in filing a consolidated federal income tax return 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 tax year **Date 2** to **Date 3** (the "requested relief"). The information provided in that request is summarized below.

Determination Letter Under Treasury Regulation 1.1502-75

SUMMARY OF FACTS

Prior to **Date 3**, **Parent** wholly owned **Sub 1**, a controlled foreign corporation. In turn, **Sub 1** wholly owned **Sub 2**, a domestic corporation.

On **Date 3**, **Parent 2** acquired **Parent** directly and **Sub 1** and **Sub 2** indirectly as part of an agreement and plan for merger. As a result of the acquisition, **Parent** filed a Form 1120, U.S. Corporation Income Tax Return, for the taxable year ending **Date 3**. Thereafter, **Parent** joined in the making of a consolidated filing with a consolidated group containing **Parent 2** and **Common Parent** for a short period ending on **Date 4**. Because **Sub 2** was wholly owned by **Sub 1**, a CFC, **Sub 2** was not affiliated with **Parent**. **Sub 2** filed a standalone Form 1120 for the taxable year ending **Date 4**.

As part of the **Date 3** acquisition of **Parent**, **Common Parent**, its tax preparer, **Accounting Firm 1**, and financial statement auditor, **Accounting Firm 2**, for the taxable years ending on **Date 4** and **Date 5**, inadvertently failed to identify and inform **Common Parent** or **Parent 2** that **Sub 1**, a CFC, possessed investments in US property prior to **Date 4**.

In **Date 6**, **Common Parent**'s tax advisor discovered that **Sub 1** held investments in US property. Thereafter, **Parent 1** filed a Private Letter Ruling request to the Office of Associate Chief Counsel dated **Date 7**, requesting an extension of time to file an election under Treas. Reg. § 301.7701-3(c) to be treated as a disregarded entity separate from **Parent** for federal tax purposes effective **Date 8**. On **Date 9**, the Office of Associate Chief Counsel granted **Sub 1**'s request, providing it with 120 days to file a Form 8832, Entity Classification Election.

REPRESENTATIONS

Parent makes the following representations in support of the requested relief: (1) had **Sub 1** or **Common Parent** known of **Sub 1**'s investment in US property as a result of the acquisition prior to the filing of the consolidated group return for the taxable year ended **Date 4**, **Sub 1** would have filed an election to be classified as a disregarded entity and (2) because such a classification would have made **Sub 2** affiliated with **Parent** under the definition of Internal Revenue Code § 1504, **Parent** and **Sub 2** would have timely elected to become a consolidated group for the period ending on **Date 3**.

Parent and **Sub 2** also represent in support that no return for the taxable year in which the Consents and the inclusion of **Sub 2** 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 examined by a district director or is being considered by an appeals office or a federal court. Additionally, the granting of the requested relief will not result in the **Parent**'s 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 for taxable year ended on **Date 3** was properly filed including **Sub 2**.

LAW

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Internal Revenue Code § 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.

Internal Revenue Code § 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 at least 80% of the stock, by vote and value, in at least one of the other includible corporations, and (ii) one or more of the other includible corporations directly owns at least 80% of the stock, by vote and value, in each of the other includible corporations except the common Parent.

Treasury Regulation § 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 that 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.

Treasury Regulation § 1.1502-75(b)(1) provides that "The consent of a corporation shall be made by the corporation joining in the making of the consolidated return for such year. A corporation shall be deemed to have joined in the making of a consolidated return if it files a Form 1122 in the manner specified in paragraph (h)(2) of this section."

Treasury Regulation § 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.

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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.

Treasury Regulation § 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.

Treasury Regulation § 1.1502-75(h)(2) provides, in relevant part, that when

[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.

Revenue Procedure 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. In this case, the Affiliated Group does not satisfy the requirements to obtain automatic relief under Rev. Proc. 2014-24.

DETERMINATION

Based solely on the information submitted and the representations made in the letter dated **Date 1**, it is determined that Treas. Reg. § 1.1502-75(b)(3) can be applied in this case. Accordingly, **Sub 2** shall be treated as if it had filed a Form 1122 in the manner specified in Treas. Reg. § 1.1502-75(h)(2), and the Parent Affiliated Group shall be treated as satisfying the requirements for filing a consolidated return for the taxable year ending **Date 3**.

CAVEATS

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Except as expressly provided herein, no opinion is expressed or implied concerning the federal 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 taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party.

PROCEDURAL MATTERS

This determination letter is directed only to the taxpayer who requested it. Internal Revenue Code § 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 US 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)