

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

Department of the Treasury
Washington, DC 20224

Release Number: 202540029

Release Date: 10/3/2025

UIL Code: 1502.00-00

In Re:

Third Party Communication: None

Date of Communication: N/A

Person To Contact:

Telephone Number:

Date:

July 10, 2025

Legend:

Parent =

Subsidiary =

Date 1 =

Date 2 =

Date 3 =

Dear :

This letter responds to the letter dated **Date 1**, submitted on behalf of **Parent** and **Subsidiary** (together, the "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 **Subsidiary's** failure to have consented to the filing of a consolidated return with **Parent** for the taxable year ended **Date 2**, pursuant to, and in the manner provided by, Treas. Reg. § 1.1502-75(a)(1), (b)(1), and (h)(2).

SUMMARY OF FACTS

Parent and **Subsidiary** are domestic corporations engaged in the medical device industry. **Subsidiary** was formed in 2021 to facilitate an acquisition. Prior to the formation of **Subsidiary**, **Parent** did not own any domestic entities and filed its own standalone return. On **Date 3**, **Parent**, **Subsidiary** and Seller entered into an Asset Purchase Agreement under which **Subsidiary** purchased the assets of Seller.

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Parent does not have in-house tax professionals or expertise in preparing Federal income tax returns. **Parent** engaged a tax preparer to assist with tax preparation, but preparer mistakenly believed the **Subsidiary** was a disregarded entity. Under this mistaken belief, the tax preparer prepared **Parents** Form 1120 tax return as a standalone corporation and did not prepare a separate return for the **Subsidiary**.

Additionally, **Subsidiary** was not included on the Forms 7004, Application for Automatic Extension of Time To File Certain Business Income Tax, Information, and Other Returns as Tax Advisor mistakenly believed **Subsidiary** was a disregarded entity. Taxpayer and **Subsidiary** also failed to file Form 851, Affiliations Schedule, and Form 1122, Authorization and Consent of Subsidiary Corporation to be Included in a Consolidated Income Tax Return, for tax year **Date 2**, and **Parent** did not check the "consolidated return" box on Form 1120, U.S. Corporation Income Tax Return, for tax year **Date 2**.

Though not reported as a corporation on the **Date 2** return, the activities of **Subsidiary** were reflected on **Parents Date 2** Form 1120, including all of **Subsidiary's** items of income, gain, deductions, loss, and credits. Furthermore, Form 8594, Asset Acquisition Statement Under Section 1060, was included in the **Date 2** Form 1120, treating **Parent** as the direct acquirer of the assets of Seller. **Subsidiary** did not separately file a Form 1120 for the taxable year ended **Date 2**.

REPRESENTATIONS

Parent and **Subsidiary** represent that (1) **Parent's** U.S. federal income tax return for the taxable year ended **Date 2** included all items of income and deduction of **Subsidiary**, (2) **Subsidiary** has never filed a separate U.S. federal income tax return, (3) **Parent** and **Subsidiary** constitute an affiliated group as defined by I.R.C. § 1504(a), and (4) **Subsidiary** intended to consent to join in the making of a consolidated return for the taxable year ended **Date 2**.

LAW

Internal Revenue Code § 1501 provides:

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) provides that the term "affiliated group" means: one or more chains of includible corporations connected through stock ownership with a

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common Parent corporation which is an includible corporation, where (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:

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. . . .

Treasury Regulation § 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. 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.

(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)

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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)(1) and (2) provide:

(h) Method of filing return and forms—(1) Consolidated return made by common Parent corporation. The consolidated return shall be made on Form 1120 for the group by the common Parent corporation. . . .

(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.

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)(2) can be applied in this case. Accordingly, **Subsidiary** 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 Affiliated Group shall be treated as satisfying the requirements for filing a consolidated return for the taxable year ended **Date 2**.

CAVEATS

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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 penalties of perjury statement executed by an appropriate party.

PROCEDURAL MATTERS

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

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

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.

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

Sincerely,

Acting Director of Field Operations (WCPA – West)

