

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Number: **199939028**

Person to Contact:

Release Date: 10/1/1999

Telephone Number:

Refer Reply To:

CC:DOM:CORP:2-PLR-104970-99

Date:

July 2, 1999

Legend:

Parent =

Subsidiary =

Unrelated Company =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Date 7 =

X =

Y =

Z =

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Dear _____ :

This is in reply to your letter dated February 26, 1999, in which you requested a ruling on behalf of Parent and Subsidiary that under section 1504(a)(3)(B) of the Internal Revenue Code (the Code), the Service waive the general rule of section 1504(a)(3)(A) of the Code. Additional information was received in a letter dated June 28, 1999.

The information submitted indicates that Parent was the common parent of an affiliated group consisting of Parent and Subsidiary. From its inception on Date 1 through Date 3 Subsidiary was a wholly-owned subsidiary of Parent. The group began filing consolidated tax returns for the tax year ended Date 2. Subsidiary had 1000 shares of common stock issued and outstanding from its incorporation through Date 3. On Date 3, Unrelated Company merged with and into Subsidiary. In consideration of the merger Parent exchanged Y shares of its common stock in Subsidiary and Z. As a result of the merger, Parent no longer was in control of Subsidiary within the meaning of 1504(a)(2), and thus affiliation was terminated. Parent filed a consolidated return which encompassed the earnings of Subsidiary for the pre-merger period. Subsidiary filed a separate return for the short year beginning after the merger.

On Date 5, the current majority shareholders of Parent purchased x percent of the stock of Parent for cash. This resulted in an ownership change with respect to Parent as defined by section 382 of the Code. On Date 6, Parent acquired the 490 shares of Subsidiary common stock previously exchanged in consideration of the merger. The stock was acquired to gain complete control of Subsidiary. The acquisition of this stock resulted in an ownership change pursuant to section 382 as of Date 6. Subsequently, Parent timely filed this request that it be allowed to file consolidated returns with Subsidiary beginning on Date 7, the date following the reaffiliation and for subsequent years.

Section 1504(a)(3)(A) of the Code provides that if a corporation is included (or required to be included) in a consolidated return filed by an affiliated group for a taxable year which includes any period after December 31, 1984, and such corporation ceases to be a member of such group in a taxable year beginning after December 31, 1984, with respect to periods after such cessation, such corporation (and any successor of such corporation) may not be included in any consolidated return filed by the affiliated group (or by another affiliated group with the same common parent or a successor of such common parent) before the 61st month beginning after its first taxable year in which it ceased to be a member of such affiliated group.

Section 1504(a)(3)(B) of the Code provides that the Secretary may waive the application of section 1504(a)(3)(A) to any corporation for any period subject to such conditions as the Secretary may prescribe.

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Section 1504(a)(3)(A) of the Code was enacted by section 60(a) of the Tax Reform Act of 1984. The Conference Report stated that the rule prohibiting consolidation after deconsolidation was an anti-abuse rule. H.R.Conf.Rep. No. 861, 98th Cong., 2d Sess. 833 (1984).

Rev. Proc. 91-71, 1991-2 C.B. 900, grants an automatic waiver of the general rule of section 1504(a)(3)(A) of the Code for taxpayers who meet its requirements. If a taxpayer qualifies for the automatic waiver under Rev. Proc. 91-71, the procedure described therein is the exclusive procedure available for obtaining a waiver of the rule contained in section 1504(a)(3)(A). The automatic waiver in Rev. Proc. 91-71 generally applies to any corporation that ceased to be a member of a group and rejoins the same group (i.e. group remained in existence within the meaning of section 1.1502-75 of the Income Tax Regulations). The automatic waiver of Rev. Proc. 91-71 does not apply in this case because the group went out of existence within the meaning of section 1.1502-75(d) of the Regulations when Subsidiary merged with Unrelated Company. Thus, the parties in the instant case must secure a ruling granting the section 1504(a)(3) waiver before a consolidated return may be filed.

Parent represents that its disaffiliation on Date 3 and reaffiliation on Date 6 has not and will not provide a benefit of a reduction in income, increase in loss, or any other deduction, credit, or allowance that would not otherwise be secured or have been secured had the disaffiliation and reconsolidation not occurred, including, but not limited to, the use of a net operating loss or credit that would have otherwise expired.

The representations submitted by the taxpayer form a material basis for the issuance of the ruling letter. Based upon the information submitted and on the representations set forth above, it is held as follows:

Pursuant to section 1504(a)(3)(B), the application of section 1504(a)(3)(A) of the Code is hereby waived. Provided that Parent and Subsidiary constitute an affiliated group of corporations within the meaning of section 1504(a), Parent and Subsidiary may join in the filing of a consolidated Federal income tax return beginning on Date 7 and for subsequent taxable years.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer(s) requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter must be attached to any income tax return to which it is relevant.

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In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to the taxpayer.

Sincerely,

Assistant Chief Counsel (Corporate)

By:

Edward S. Cohen
Chief, Branch 2