Internal Revenue Service

Department of the Treasury

Washington, DC 20224

Number: **200252070**
Release Date: 12/27/2002
Index Number: 1502-50.00

Person to Contact:

Telephone Number:
(202) 622-7770
Refer Reply To:
CC:DOM:CORP-PLR-123904-02
Date:
September 20, 2002

Parent =

Sub 1 =

Sub 2 =

Sub 3 =

Partnership =

Holding =

Sub 4 =

Sub 5 =

Sub 6 =

Country A =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

v =
w =
x =
y =
z =

Dear

This is in response to a letter dated April 23, 2002 from your authorized representative requesting rulings. In particular, you requested rulings regarding the use of losses in a life-nonlife consolidated return.

The information submitted indicate that Parent is a nonlife company that is the common parent of a consolidated group filing a life-nonlife consolidated return. As of Date 1, Parent owned all of the stock of Sub 1. Sub 1, owned all of the stock of Sub 2 and Sub 3. Sub 3 was a Country A corporation taxable as a U.S. corporation. Sub 1, Sub 2, and Sub 3 each qualified as a life insurance company under Internal Revenue Code § 801 and were includible members of the Parent consolidated group.

Sub 3 owned w percent of the membership interests in Partnership, a limited liability corporation treated as a partnership for federal income tax purposes. Sub 1 owned the remaining x percent of the Partnership membership interests.

Sub 2 also owned y percent of the outstanding stock of Holding, a common parent of a life-nonlife consolidated group. Partnership owned the remaining z percent of Holding's stock.

Holding owned all of the stock of Sub 4 and Sub 5. Sub 5 owned all of the stock of Sub 6. Sub 5 and Sub 6 were life insurance company members of the Holding life-nonlife consolidated group. Holding and Sub 4 were nonlife members of the Holding consolidated group.

On Date 1, Sub 1 transferred its x percent interest in Partnership to Sub 3, the only other member of Partnership, thereby terminating the partnership for federal

income tax purposes. Sub 3 succeeded to the assets and liabilities of Partnership for federal tax purposes, including the z percent interest in Holding. Sub 3 then transferred the z percent interest in Holding previously held by Partnership to Sub 2 in exchange for v% of Sub 2's stock and Sub 2's assumption of the former liabilities of Partnership.

As a result, Sub 2 owned all of the stock of Holding. Therefore, Holding and Sub 4 became includible ineligible nonlife members of the Parent life-nonlife consolidated group. Sub 5 and Sub 6 filed a separate life-life consolidated return because they were not includible members of the Holding consolidated group.

On Date 3, Sub 3 distributed its v% of Sub 2 stock to Sub 1 in a taxable distribution.

On Date 4, Holding liquidated into Sub 2. Sub 4 then liquidated into Sub 2 and Sub 5 merged into Sub 2.

The following representations have been provided:

a. The complete liquidation of Holding into Sub 2 qualified for tax-free treatment under I.R.C. § 332.

b. The complete liquidation of Sub 4 into Sub 2 qualified for tax-free treatment under I.R.C. § 332.

c. On Date 1, excess loss accounts did not exist in the stock of Holding, Sub 4, Sub 5 or Sub 6. The Date 1 restructuring transactions, whereby Holding and Sub 4 became includible members of the Parent consolidated group, did not result in Holding, Sub 4, Sub 5 or Sub 6 taking any intercompany items into account pursuant to § 1.1502-13.

d. On Date 4, Sub 2 did not have an excess loss account in the stock of Holding, Sub 4, or Sub 5. The complete liquidations of Holding and Sub 4, and the merger of Sub 5 into Sub 2 on Date 4 did not result in Holding, Sub 4 or Sub 5 taking any intercompany items into account.

I.R.C. § 381(a)(1) provides, in part, that in the case of the acquisition of assets of a corporation by another corporation in a distribution to such other corporation to which section 332 (relating to liquidations of subsidiaries) applies, the acquiring corporation shall succeed to and take into account the items described in subsection (c) of the distributor or transferor corporation, subject to the conditions and limitations specified in subsection (b) and (c). I.R.C. § 381(c)(1) provides that one of the items is the net operating loss carryovers determined under § 172 subject to the prescribed conditions and limitations.

Treas. Reg. § 1.1502-1(e) provides that the term “separate return year“ means a taxable year of a corporation for which it files a separate return or for which it joins in the filing of a consolidated return by another group.

Treas. Reg. § 1.1502-1(f) provides that the term separate return limitation year (or SRLY) means any separate return year of a member or of a predecessor of a member except as provided otherwise. The term predecessor means a transferor or distributor of assets to a member (the successor) in a transaction to which § 381(a) applies. Treas. Reg. § 1.1502-1(f)(4).

Treas. Reg. § 1.1502-21(c) provides, generally, that the aggregate of the net operating loss carryovers and carrybacks of a member arising in SRLYs that are included in the CNOL deductions for all consolidated return years of the group under paragraph (a) of this section may not exceed the aggregate consolidated taxable income for all consolidated return years of the group determined by reference to only the member’s items of income, gain, deduction, and loss.

Treas. Reg. § 1.1502-21(f) provides that for purposes of this section, any reference to a corporation, member, common parent, or subsidiary, includes as the context may require, a reference to a successor or predecessor as defined in § 1.1502-1(f)(4).

Treas. Reg. § 1.1502-47(m)(3)(ix) provides, in part, that the offsetable nonlife consolidated net operating and capital loss carryovers do not include any losses attributable to a nonlife member that were sustained in a separate return limitation year (determined without § 1504(b)(2)) of that member (or a predecessor).

I.R.C. § 805(b)(4) provides that, except as provided by § 844, the deduction for net operating losses provided in § 172 shall not be allowed.

I.R.C. § 806(b)(3) provides that, in computing the life insurance company taxable income of any life insurance company, any loss from a noninsurance business shall be limited under the principles of § 1503(c).

Based on the facts and representations provided, it is held that:

1. Any NOL carryovers of Holding or Sub 4 arising before Date 2 will be separate return limitation year (“SRLY”) losses as to the Parent consolidated group and therefore are limited under Treas. Reg. § 1.1502-21(c).

2. Sub 2 succeeded to any NOL carryovers of Holding or Sub 4 upon the respective liquidations of Holding and Sub 4 into Sub 2. I.R.C. § 381(a)(1) and (c). The NOL carryovers of Holding and Sub 4 will retain their

character as nonlife losses in the hands of Sub 2. The use of the net operating loss carryover is not further limited by I.R.C. § 806(b)(3)(C) or denied by I.R.C. § 805(b)(4).

3. For purposes of applying the SRLY limitation to any NOL carryovers of Holding or Sub 4 arising before Date 2, Sub 2's items of income and gain are included when computing the amount of those NOL carryovers that are included in the consolidated net operating loss deduction of the Parent consolidated group for the period after Date 4. Treas. Reg. § 1.1502-21(f).

4. The NOL carryovers of Holding and Sub 4 arising before Date 2 that are not prevented from being used by the SRLY limitation, are ineligible nonlife losses and, as such, cannot offset life income. As ineligible nonlife losses, the losses are offsetable against nonlife income of members of the Parent consolidated group subject to the restrictions of Treas. Reg. § 1.1502-47(m)(3)(ix).

5. Any separate net operating loss (determined under § 1.1502-21(b)) of Holding and Sub 4 incurred between Date 2 and Date 4 are ineligible nonlife NOLs that may not be aggregated in determining the offsetable nonlife consolidated NOL. Treas. Reg. § 1.1502-47(m)(3)(vi).

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

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. In particular, no opinion is given as to whether the corporations referenced herein otherwise satisfy the eligibility requirements of Treas. Reg. § 1.1502-47(d)(12). Furthermore, no opinion is expressed or implied concerning the tax consequences of the liquidation of Holding into Sub 2, the liquidation of Sub 4 into Sub 2, and the merger of Sub 5 into Sub 2.

This ruling is directed only to the taxpayer(s) requesting it. I.R.C. § 6110(k)(3) provides that it may not be used or cited as precedent.

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

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

Sincerely,

Edward S. Cohen

Edward S. Cohen
Chief, Branch 2
Office of Associate Chief Counsel
(Corporate)