**Internal Revenue Service**

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Department of the Treasury
Washington, DC 20224

Person To Contact:
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Refer Reply To:
CC:CORP:2 – PLR-171509-03
Date:
April 29, 2004

Legend

Foreign 1 =

Foreign 2 =

Foreign 3 =

Corporation A =

Parent =

Subsidiary 1 =

Subsidiary 2 =

State X =

Tax Year =

Business A =

Business B =

Business C =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Company Official =

Tax Director =

Tax Professional =

Dear

This letter responds to a letter submitted on behalf of Parent, dated December 8, 2003, requesting that the Commissioner, pursuant to § 1.1502-75(b)(3) of the Income Tax Regulations (the "Regulations"), treat Subsidiary 2 as if it had filed a Form 1122 for Tax Year for purposes of § 1.1502-75(h)(2), and thus joined in the making of the consolidated return with Parent and Subsidiary 1. Additional information was submitted

in letters dated February 23, April 6, and April 20, 2004. The information submitted is summarized below.

## Summary of Facts

Parent, a State X corporation, is engaged in Business A. Subsidiary 1, a wholly-owned subsidiary of Parent, is engaged in Business B. Subsidiary 2, a wholly-owned subsidiary of Parent from Date 2 to Date 3, is engaged in Business C. On Date 3, Subsidiary 2 merged into Parent.

Prior to Date 1, Corporation A was the common parent of an affiliated group of corporations filing consolidated returns that included Parent, Subsidiary 1, and Subsidiary 2. Corporation A was wholly-owned by Foreign 3, which was wholly-owned by Foreign 1 and Foreign 2.

On Date 1, Foreign 3 purchased 100% of the shares of Subsidiary 2 and 100% of the shares of Parent. Thus, on Date 1, Subsidiary 2 was disaffiliated from the Corporation A consolidated group and became a stand-alone U.S. corporation, wholly-owned by Foreign 3. Similarly, after Date 1, Parent and Subsidiary 1 were owned by Foreign 3 and were no longer members of the Corporation A consolidated group.

Also on Date 1, an unrelated foreign entity acquired a majority interest in Foreign 3. After acquiring control of Foreign 3, the acquirer undertook certain internal restructurings of some of the corporations owned by Foreign 3. In particular, on Date 2, Foreign 3 contributed the stock of Subsidiary 2 to Parent, making Subsidiary 2 a subsidiary of Parent for a portion of Tax Year.

Company Official, unaware of Foreign 3's transfer of the Subsidiary 2 stock to Parent, advised Tax Director that Subsidiary 2 was not a member of the Parent affiliated group. Thus, Tax Director failed to advise Tax Professional to include Subsidiary 2 in the Parent group's consolidated return for Tax Year.

On Date 4, after Parent filed its consolidated return for Tax Year, Tax Director became aware that Foreign 3 had transferred the stock of Subsidiary 2 to Parent on Date 2. Parent submitted this ruling request in order to correct the omission of Subsidiary 2 from the consolidated return for Tax Year.

## Applicable Law

Section 1.1502-75(a)(1) of the Regulations 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 a member during any part of the taxable year for which the consolidated return is to be filed consents to the Regulations under section 1502.

Section 1.1502-75(b)(1) of the Regulations provides that the consent of a corporation shall be made by such corporation joining in the making of a 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 section 1.1502-75(h)(2) of the Regulations.

Section 1.1502-75(h)(2) of the Regulations provides that if a group wishes to exercise its privilege of filing a consolidated return, then a Form 1122 must be executed by each subsidiary and must be attached to the consolidated return for such year.

Section 1.1502-75(b)(3) of the Regulations provides that if any member has failed to join in the making of a consolidated return, then the tax liability of each member of the group shall be determined on the basis of a separate return 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 mistake of law or fact, or to inadvertence. In such cases, such member shall be treated as if it had filed a Form 1122 for such year and joined in the making of the consolidated return for such year.

Information, affidavits, and representations submitted by Foreign 3, Parent, Company Official, Tax Director, and Tax Professional represent that the failure of Subsidiary 2 to join in the making of the consolidated return was the result of a mistake of fact. The representations and information submitted by the taxpayer form a material basis for the issuance of this ruling letter.

## Rulings

Based on the facts and information submitted, including the representations made, it is concluded that:

(1) Subsidiary 2 shall be treated as if it had filed a Form 1122 for Tax Year for purposes of section 1.1502-75(h)(2) of the Regulations, and thus joined in the making of the consolidated return for such year. § 1.1502-75(b)(3).

(2) Parent will file an amended consolidated federal income tax return for Tax Year to include the income and deductions of Subsidiary 2.

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, including whether Parent, Subsidiary 1, and Subsidiary 2 qualify substantively to file a consolidated return.

For purposes of issuing this ruling, we relied on certain statements and representations made under penalties of perjury. However, the Director should verify all essential facts. In addition, notwithstanding that Parent has satisfactorily established that Subsidiary 2 failed to join its consolidated return due to a mistake of fact, penalties and interest that would otherwise be applicable, if any, continue to apply.

This ruling is directed only to the taxpayers 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.

In accordance with the Power of Attorney on file with this office, copies of this letter are being sent to Taxpayer and a second authorized representative.

Sincerely,

*Gerald Fleming*

Gerald Fleming
Senior Technician Reviewer, Branch 2
Office of Associate Chief Counsel
(Corporate)

cc: