Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

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Person To Contact:
, ID No.
Telephone Number:

Refer Reply To:
CC:CORP:05
PLR-141757-06
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January 05, 2007

Legend

Parent =

State X =

LLC1 =

Sub1 =

Included Members =

Omitted Members =

Firm =

Year1 =

Year2 =

Date1 =

Date2 =

Date3 =

Dear :

This is in reply to correspondence, submitted on your behalf by your authorized representative, requesting a ruling under § 1.1502-75(b)(3) of the Income Tax Regulations (the "Regulations"). Additional information was received subsequently.

FACTS

Parent is a StateX corporation. On Date1, Parent was a party to a series of transactions ("the Transaction") which resulted in Parent becoming the common parent of a consolidated group of entities ("Parent Group").

Prior to the Transaction, LLC1 was a limited liability company taxed as a partnership for federal income tax purposes. Its membership interests were owned by a mixture of C corporations, partnerships, LLCs and one S corporation within the meaning of section 1361(a) of the Internal Revenue Code ("Code"), Sub1. Sub1 owned 100% of the stock of 10 qualified subchapter S subsidiaries (collectively, "Omitted Members").

In the Transaction, Parent acquired all of the outstanding stock of the C corporation members, the stock of Sub1, the member interests in the participating LLC members, and a minority interest in one of the partnership members. Each corporate LLC1 member became a wholly-owned subsidiary of Parent (collectively, "Included Members"), through which Parent indirectly owned 100% of LLC1.

Parent intended that after the Transaction any separate business operations of the LLC1 members would be transferred to LLC1 ("the Transfers") and conducted solely by LLC1. The sole asset of each LLC1 member would then consist of its membership interest in LLC1. In connection with the Transaction, Parent understood that certain steps were to be taken so that the operations formerly conducted by Sub1 and its subsidiaries could be contributed to LLC1.

As a result of the Transaction, Sub1 ceased to be an S corporation, filed a short-period return, including the required notification of termination of S status, for the taxable year ended Date1 and became an Included Member of Parent's Year1 consolidated return.

Parent engaged Firm to prepare the Year1 consolidated federal income tax return. The initial consolidated return (Form 1120) for the year ended Date3 was prepared, and only Included Members joined in the making of the consolidated return for such year by filing Forms 1122, *Authorization and Consent of Subsidiary Corporation*

to be Included in a Consolidated Income Tax Return, pursuant to § 1.1502-75(b)(1) and (h)(2) of the Regulations. Further, the Omitted Members were not included on the Parent Group's Form 851, *Affiliations Schedule*, for that year. Parent filed the return on or before Date2.

In early Year2, Parent discovered that Sub1 was still the sole owner of the Omitted Members rather than LLC1, and that Sub1's stock in the Omitted Members had not been part of the Transfers in the Transaction as Parent had believed and understood. As soon as Parent became aware that the Omitted Members had been owned by Sub1 and not LLC1 at the time Parent filed its consolidated return for the year ended Date3, Parent determined to file this letter ruling request under § 1.1502-75(b)(3) of the Regulations.

REPRESENTATIONS

1. Parent and its subsidiaries (including the Omitted Members) were eligible to file a consolidated return that included all of its members for the year ended Date3.

2. Parent and its subsidiaries (including Omitted Members) would have validly elected to file a consolidated return for the year ended Date3, which return would have included Parent, Included Members and Omitted Members, and failed to do so only based on a mistake of fact.

3. Each of the Omitted Members had conducted no business, had no items of income, gain, deduction or credit from the date it joined the Parent Group.

4. For year ended Date3, Parent and its subsidiaries reported all of their income and expenses on a timely filed consolidated return.

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 § 1.1502-75(h)(2) of the Regulations.

Section 1.1502-75(h)(2) of the Regulations provides that if, under the provisions of § 1.1502-75(a)(1) of the Regulations, a group wishes to file a consolidated return for a taxable year, then a Form 1122 must be executed by each subsidiary. The regulation provides rules for properly executing Forms 1122 and attaching them to a consolidated return, and also provides that a 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.

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 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 § 1.1502-75(h)(2) of the Regulations, and thus joined in the making of the consolidated return for such year.

HOLDING

Based solely on the facts and information submitted, it is held that Parent has established to the satisfaction of the Commissioner that due to a mistake of fact it excluded the Omitted Members in making its consolidated return for the year ended Date3. The Omitted Members shall be treated as if they had filed Forms 1122 for such year for purposes of § 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).

Within 45 days of the date on this letter, Parent shall file amended returns for the year ended Date3 and all subsequent years necessary, to include the Omitted Members.

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.

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.

This ruling is directed only to the taxpayer 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. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

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

Sincerely,

Thomas I. Russell

Thomas I. Russell
Senior Counsel, Branch 5
Office of Associate Chief Counsel
(Corporate)