Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
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Person To Contact:
, ID No.
Telephone Number:

Refer Reply To:
CC:CORP:B02
PLR-141631-07

Date:
December 04, 2007

Legend

Shareholder =

Acquiring Parent =

Target Parent =

Sub 1 =

Intermediate =

Sub 2 =

Merged Corporation =

Date 1 =

Date 2 =

Date 3 =

Year 4 =

Year 5 =

Business X =

Business Y =

Country Z =

a =

b =

Dear :

This responds to a letter dated September 14, 2007, submitted on behalf of Acquiring Parent, requesting a ruling under § 1504(a)(3)(B) of the Internal Revenue Code waiving the application of § 1504(a)(3)(A) with respect to Merged Corporation. Additional information was received in a letter dated November 16, 2007. The material information submitted is summarized below.

Prior to Date 1, Shareholder owned all of the shares of Target Parent, the parent of an affiliated group of corporations that joined in the filing of a consolidated federal income tax return (the "Target Parent Group"). Shareholder is a limited liability company treated as a partnership for federal income tax purposes which is engaged in Business X. Target Parent owned all of the shares of Sub 1, a Country Z company engaged in Business Y that elected to be treated for United States tax purposes as a United States corporation under § 953(d) of the Code and was consequently a member of the Target Parent group.

On Date 1, Shareholder purchased all of the shares of Acquiring Parent. Acquiring Parent was the common parent of an affiliated group of corporations that joined in the filing of a consolidated federal income tax return (the "Acquiring Parent Group"). Immediately after the purchase, Acquiring Parent owned all of the shares of Intermediate which in turn owned all of the shares of Sub 2. Like Sub 1, Sub 2 was a Country Z company engaged in Business Y that had elected to be treated for United States tax purposes as a United States corporation under § 953(d) of the Code. Sub 2 was therefore a member of the Acquiring Parent Group.

On Date 2, Sub 1 and Sub 2 amalgamated under Country Z law. Sub 1 survived the amalgamation and its election under § 953(d) remains in effect. The corporation resulting from the amalgamation is now known as Merged Corporation.

Immediately after the Date 2 amalgamation, Target Parent owned approximately a% of the stock of Merged Corporation and Acquiring Parent indirectly owned approximately b% of the stock of Merged Corporation. Merged Corporation, the successor of Sub 1 and Sub 2, was therefore not a member of either the Target Parent Group or the Acquiring Parent Group. Merged Corporation therefore filed a separate return for the period from the date following Date 2 until Date 3.

On Date 3, Shareholder contributed all of its shares in Target Parent to Acquiring Parent. The Target Parent Group therefore terminated and Merged Corporation became a member of the Acquiring Parent affiliated group. Merged Corporation was barred by § 1504(a)(3)(A) from joining in the filing of the Acquiring Parent Group's consolidated return for Year 4, and Acquiring Parent did not request a waiver under Rev. Proc. 2002-32, 2002-1 C.B. 959, with respect to Merged Corporation for that year.

Section 1504(a)(3)(A) provides that if a corporation is included in a consolidated federal income tax return filed by an affiliated group of corporations and such corporation ceases to be a member of such group, such corporation (or 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)(A) therefore prevents Merged Corporation from being included in the consolidated return of the Acquiring Parent group before the 61st month after the taxable year that included Date 2. However, section 1504(a)(3)(B) allows the Secretary to waive the application of section 1504(a)(3)(A) to any corporation for any period subject to such conditions as the Secretary may prescribe. Section 1504(a)(3)(A) was enacted by section 60(a) of the Tax Reform Act of 1984. The Conference Report states that the rule prohibiting consolidation after deconsolidation is an anti-abuse rule. H.R. Conf. Rep. No. 98-861, at 833 (1984).

Rev. Proc. 2002-32 grants an automatic waiver of the general rule of section 1504(a)(3)(A) for taxpayers who meet its requirements. Section 5 of Rev. Proc. 2002-32 specifies the information and representations to be included in a request for an automatic waiver. Section 5 provides that in order to obtain the automatic waiver, the deconsolidated corporation must be included in a timely filed (including extensions) consolidated return of the affiliated group with respect to which the waiver request relates, for the taxable year that includes the date on which such corporation most recently became a member of such affiliated group. Because no waiver was obtained for Year 4, the Acquiring Parent group does not qualify for the automatic waiver under Rev. Proc. 2002-32.

Section 7 of Rev. Proc. 2002-32 provides that if a deconsolidated corporation cannot qualify for an automatic waiver, a waiver under section 1504(a)(3)(B) may only be obtained through a letter ruling request. Section 7 of Rev. Proc. 2002-32 further provides that the ruling request should include the information set forth in section 5 of Rev. Proc. 2002-32.

Section 5.14 of Rev. Proc. 2002-32 provides that the request must include a representation that the disaffiliation and subsequent consolidation has not provided and will not provide a benefit of a reduction in income, increase in loss, or any other deduction, credit, or allowance (a federal tax savings) that would not otherwise be secured or have been secured had the disaffiliation and subsequent consolidation not occurred, including, but not limited to, the use of a net operating loss or credit that would otherwise have expired, or the use of a loss recognized on a disposition of stock of the deconsolidated corporation or a predecessor of such corporation. Section 5.14 of Rev. Proc. 2002-32 further provides that in determining whether the disaffiliation and subsequent consolidation provided or will provide a federal tax savings, the net tax consequences to all parties, taking into account the time value of money, are considered.

Acquiring Parent has represented that the disaffiliation of Sub 1 and Sub 2 from their respective consolidated groups and the subsequent consolidation of Merged Corporation into the current Acquiring Parent group has not provided and will not provide a federal tax savings that would not otherwise be secured or have been secured had the disaffiliation and reconsolidation not occurred. Acquiring Parent has considered the net tax consequences to all parties in determining that neither the disaffiliation nor the consolidation provided or will provide a federal tax savings.

Based solely on the information and representations submitted, we rule that pursuant to section 1504(a)(3)(B), the application of section 1504(a)(3)(A) is waived. Provided that the Merged Corporation is otherwise includible in the consolidated return to be filed by the Acquiring Parent Group, the Merged Corporation may be included in the Acquiring Parent Group's consolidated federal income tax return for Year 5.

The rulings contained in this letter are based on facts and representations submitted by the taxpayer and accompanied by a penalties of perjury statement executed by an appropriate party. This office has not verified any of the materials submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process.

Except as 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. Specifically, no opinion is expressed as to whether Sub 1, Sub 2, or Merged Corporation is qualified to make an election under § 953(d) to be treated as a United

States corporation for United States tax purposes or whether such elections have been or are in effect.

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, copies of this letter are being sent to your authorized representatives.

Sincerely,

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Gerald B. Fleming
Senior Technician Adviser, Branch 2
Office of Assistant Chief Counsel (Corporate}