Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No

Telephone:

Refer Reply To:
LB&I ACDDI:PMO, IR 1135

Date:
JUNE 2, 2020

Legend

Taxpayer =

Parent =

Sub 1 =

Sub 2 =

Sub 3 =

Business A =

Partnership =

Accounting Firm 1 =

Accounting Firm 2 =

Year =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

x =

Dear :

This letter responds to a letter dated Date 1, submitted on behalf of Taxpayer, requesting that the Commissioner make a determination regarding the failure of two of its indirectly wholly owned subsidiaries, Sub 2 and Sub 3, to join in the filing of a consolidated U.S. income tax return, as required by Section 1.1502-75(a)(1) of the Regulations, for the tax year ended Date 2 (the "Requested Relief"). The information provided in that request is summarized below.

The determination contained in this letter is based upon 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 material submitted in support of the request for this determination letter.

SUMMARY OF FACTS

During the relevant periods, Parent, Sub 1, Sub 2, and Sub 3 (collectively, the "Parent Group"), owned and operated Business A. Parent owned 100 percent of the stock of Sub 1; Sub 1 owned 100 percent of the stock of Sub 2; and Sub 2 owned 100 percent of the stock of Sub 3. Each of Parent, Sub 1 and Sub 2 were holding companies, with no material operations. Sub 3 operates Business A.

In Year, the following series of transactions occurred:

(i) On Date 3, Parent was formed on behalf of Partnership.

(ii) On Date 3, Parent formed Sub 1 to acquire all the stock of Sub 2.

(iii) On Date 4, pursuant to a stock purchase agreement dated Date 5, Partnership and its co-investors contributed cash to Parent in exchange for Parent's stock. Simultaneously, x former Sub 2 shareholders contributed cash and a portion of their stock in Sub 2 to Parent.

(iv) On Date 4, Parent contributed the aforementioned cash and stock of Sub 2 to Sub 1.

(v) On Date 4, Sub 1 borrowed additional cash and acquired all the remaining stock of Sub 2 for cash.

For the tax year ended Date 2, Parent and Sub 1 elected to file a consolidated return. The Parent consolidated return for the tax year ended Date 2 included Form 851 (Affiliations Schedule), reflecting only Sub 1 as Parent's wholly owned subsidiary, and the Form 1122 (Authorization and Consent of Subsidiary Corporation to be Included in a Consolidated Income Tax Return) with respect to Sub 1. The Form 1122 (Authorization and Consent of Subsidiary Corporation to be Included in a Consolidated Income Tax Return) for Sub 2 and Sub 3 (the "Consents") were not included in the Parent consolidated tax return for the tax year ended on Date 2.

For the tax years ended Date 2 and Date 6, Sub 2 and Sub 3 filed consolidated returns separate from Parent's consolidated returns. These consolidated returns included Form 851 (Affiliations Schedule), reflecting only Sub 3 as Sub 2's wholly-owned subsidiary.

REPRESENTATIONS

The following representations are made in support of the Requested Relief:

(a) No return for the taxable year in which the Consents and the inclusion of Sub 2 and Sub 3 in Parent's consolidated return should have been made (or any taxable years that would have been affected by such failures had they been timely made) is being examined by a district director, or is being considered by an appeals office or a federal court; and

(b) The granting of the Request Relief will not result in the Parent consolidated group having a lower tax liability in the aggregate for all years to which the relief applies than it would have had if the consolidated return for Year was properly filed including Sub 2 and Sub 3.

LAW

IRC § 1501 provides that "An affiliated group of corporations shall . . . have the privilege of making a consolidated return with respect to the income tax imposed by chapter 1 for the taxable year in lieu of separate returns. The making of a consolidated return shall be upon the condition that all corporations which at any time during the taxable year have been members of the affiliated group consent to all the consolidated return regulations prescribed under section 1502 prior to the last day prescribed by law for the filing of such return. The making of a consolidated return shall be considered as such consent."

IRC § 1504(a)(1) and (2) define the term "affiliated group" as "1 or more chains of includible corporations connected through stock ownership with a common parent corporation which is an includible corporation, but only if -

(i) The common parent directly owns stock with at least 80 percent of the total voting power and 80 percent of the total value of at least 1 other includible corporation, and

(ii) Stock with at least 80 percent of the total voting power and 80 percent of the total value of each of the includible corporations is directly owned by 1 or more of the other includible corporations."

Treas. Reg. § 1.1502-75(a)(1) 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 that has been a member during any part of the taxable year for which the consolidated return is to be filed consents (in the manner provided in paragraph (b) of this section) to the regulations under section 1502."

Treas. Reg. § 1.1502-75(b)(1) provides that "The consent of a corporation shall be made by the corporation joining in the making of the consolidated return for such year. A corporation shall be deemed to have joined in the making of a consolidated return if it files a Form 1122 in the manner specified in paragraph (h)(2) of this section."

Treas. Reg. § 1.1502-75(b)(2) provides that "If a member of the group fails to file Form 1122, the Commissioner may under the facts and circumstances determine that such member has joined in the making of a consolidated return by such group. The following circumstances, among others, will be taken into account in making this determination: (i) Whether or not the income and deductions of the member were included in the consolidated return; (ii) Whether or not a separate return was filed by the member for that taxable year; and (iii) Whether or not the member was included in the affiliations schedule, Form 851. If the Commissioner determines that the member has joined in the making of the consolidated return, such member shall be treated as if it had filed a Form 1122 for such year for purposes of paragraph (h)(2) of this section."

Treas. Reg. § 1.1502-75(b)(3) provides that "If any member has failed to join in the making of a consolidated return under either subparagraph (1) or (2) of this paragraph, 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 paragraph (h)(2) of this section, and thus joined in the making of the consolidated return for such year."

Treas. Reg. § 1.1502-75(h)(2) provides that "If a group wishes to file a consolidated return for a taxable year, then a Form 1122 ("Authorization and Consent of Subsidiary Corporation to be Included in a Consolidated Income Tax Return") must be executed by each subsidiary…For taxable years beginning after December 31, 2002, the group must attach either executed Forms 1122 or unsigned copies of the completed Forms 1122 to the consolidated return…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."

Rev. Proc. 2014-24 allows an affiliated group that satisfies certain requirements to obtain an automatic determination to treat a subsidiary member of the affiliated group as if it filed a Form 1122, even though it failed to do so.

In this case, the Parent Group does not satisfy the requirements of Revenue Procedure 2014-24 necessary to obtain automatic relief to treat Sub 2 and Sub 3 as if they filed Form 1122 for the tax year ended Date 2. However, the IRS may act on behalf of the Commissioner to treat Sub 2 and Sub 3 as if they had filed Forms 1122 and joined in the filing of the Parent consolidated return under the provisions of Treas. Reg. § 1.1502-75(b)(2) or (3). Treas. Reg. § 1.1502-75(b)(2) does not apply in this case, because: (i) the income and deductions of Sub 2 and Sub 3 were not included in the Parent consolidated return; (ii) Sub 2 and Sub 3 filed separate consolidated returns for the tax years ended Date 2 and Date 6; and (iii) Sub 2 and Sub 3 were not included in the Parent's Form 851 affiliations schedule for Parent's consolidated returns ended Date 2 and Date 6. In order to obtain relief under Treas. Reg. § 1.1502-75(b)(3), Sub 2 and Sub 3's failure to join in the making of the consolidated return must have been due to a mistake of law or fact, or to inadvertence.

DETERMINATION

It is our position that Treas. Reg. § 1.1502-75(b)(3) applies in this case, and an amended return to include Sub 2 and Sub 3 as members of the Parent consolidated return for the tax years ended Date 2 and Date 6 should be allowed.

The fact that the consolidated return for Parent and Sub 1 for Year included Form 1122 (Authorization and Consent of Subsidiary Corporation to be Included in a Consolidated Income Tax Return) for Sub 1 and included Sub 1 in the Form 851 (Affiliation Schedule) indicate that Parent intended to file a consolidated return under Section 1501 for the tax year ended Date 2. In addition, the fact that the consolidated return for Sub 2 and Sub 3 for the tax year ended Date 2 included Sub 3 on Form 851 (Affiliation Schedule) indicates that Sub 2 and Sub 3 intended to file a consolidated return under Section 1501 for the tax year ended Date 2. Parent did not include Sub 2 and Sub 3 in the consolidated return due to an inadvertent error. Treas. Reg. § 1.1502-75(a)(1) allows the Parent Group to file a consolidated return in lieu of separate returns for the tax year ended Date 2, provided that each corporation which was a member of the Parent affiliated group at any time during Date 2 tax year joins in the filing of the Parent consolidated return. The Taxpayer indicated that at the time of the preparation of the relevant Date 2 U.S. federal income tax returns by Accounting Firm 1 for Parent and Sub 1 and the preparation of relevant Date 2 U.S. federal income tax returns by Accounting Firm 2 for Sub 2 and Sub 3, neither return preparer identified to Parent the requirement to file the Consents with the Parent Group return and the requirement that Sub 2 and Sub 3 be included in the Parent consolidated return ended on Date 2. Therefore, the Consents were not obtained, and Sub 2 and Sub 3 were not included in the Parent consolidated return for the years ending Date 2 and Date 6.

It is our opinion that the common Parent corporation has satisfactorily established that the failure of Sub 2 and Sub 3 to join in the making of the consolidated return for the tax year ended Date 2 was due to a mistake of law or fact, or inadvertence. Since Parent intended to exercise its privilege of filing a consolidated return for the Parent Group, and Parent directly owned at least 80 percent of the total voting power and 80 percent of the total value of Sub 1, which owned at least the 80 percent of the total voting power and 80 percent of the total value of Sub 2, which in turn owned at least 80 percent of the total voting power and 80 percent of the total value of Sub 3, then Sub 2 and Sub 3 were required to join in the filing of the consolidated return in order to obtain the benefits of consolidation and should be treated as if they had filed Form 1122 for the tax year ended Date 2 per Treas. Reg. § 1.1502-75(b)(3).

Based solely on the information submitted and the representations set forth above, we conclude that pursuant to Treas. Reg. § 1.1502-75(b)(3), the Taxpayer is allowed to amend its consolidated returns for the tax years ended Date 2 and Date 6, in order to include Sub 2 and Sub 3 as members of the consolidated return as if Sub 2 and Sub 3 had timely filed Form 1122, and therefore joined in the making of a consolidated return.

CAVEATS

Except as expressly provided herein, no opinion is expressed or implied concerning the federal income tax consequences of any aspect of any transaction or item discussed or referenced in this letter or about the tax treatment of any condition existing at the time of, or effects resulting from, any transaction or item that is not specifically covered by the above determination.

The determination contained in this letter is based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party.

PROCEDURAL MATTERS

This determination letter is directed only to the taxpayers who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

This office will associate a copy of this determination letter with the taxpayer's federal income tax returns for the years ended Date 2 and Date 6.

A copy of this determination 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 returns that provides the date and control number of the determination letter.

Sincerely,

By: _____