

**Internal Revenue Service**

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**Department of the Treasury**

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**Person to Contact:**

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**Refer Reply To:**  
CC:DOM:CORP:2 - PLR-115084-98  
**Date:**  
April 27, 1999

Re:

Purchaser =

Parent =

Sub 1 =

Sub 2 =

Sub 3

Date 1 =

Date 2 =

Date 3 =

Date 4 =

a% =

b% =

c % =

Dear :

This is in response to a letter dated June 9, 1998 in which you requested a ruling on behalf of Parent that, under § 1504(a)(3)(B) of the Internal Revenue Code (the "Code"), the Service waive the general rule of § 1504(a)(3)(A) of the Code. Additional information was received in letters dated September 21, 1998 and October 16, 1998.

The information submitted indicates that for the three tax years ending on Date 1, Parent, a calendar year taxpayer, was the common parent of a consolidated group that included Sub 1, Sub 2, and Sub 3 (the "Old Parent Group"). Approximately a% of the value and b% of the voting power of the outstanding stock of Parent was owned on Date 1 by a wholly-owned subsidiary of Purchaser. This ownership did not meet the requirements of § 1504(a) of the Code. Purchaser is a calendar year taxpayer, which also was the common parent of a consolidated group (the "Purchaser Group"). On Date 1, Purchaser, through a wholly-owned subsidiary, purchased all of the remaining outstanding stock of Parent. As a result of this purchase, Parent became a member of the Purchaser group, and the Old Parent Group terminated. Parent and Sub 1, Sub 2, and Sub 3, will therefore be included in the Purchaser Group consolidated return for the taxable year that includes Date 2, the day after Date 1.

On Date 3, as a result of an initial public offering of Parent stock, the percentage of Parent stock owned by Purchaser fell to c%, below the requirements of § 1504(a) of the Code. Parent then filed this request that it be allowed to file consolidated returns with its historical subsidiaries Sub 1, Sub 2, and Sub 3 for the period beginning on Date 4 (the day after Date 3).

Parent has represented, and has submitted information indicating, that the Parent group's disaffiliation on Date 1 and reaffiliation on Date 3 will not provide a benefit of a reduction in income, increase in loss, or any other deduction, credit, or allowance that would not otherwise be secured had the disaffiliation and reconsolidation not occurred. This representation forms a material basis for the issuance of this ruling letter.

Section 1504(a)(3)(A) of the Code provides that if a corporation is included (or required to be included) in a consolidated return filed by an affiliated group for a taxable year which includes any period after December 31, 1984, with respect to periods after such cessation, such corporation (and 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 61<sup>st</sup> month beginning after its first taxable year in which it ceased to be a member of such affiliated group.

Rev. Proc. 91-71, 1991-2 C.B. 900, grants an automatic waiver of the general rule of § 1504(a)(3)(A) of the Code for taxpayers that meet its requirements. If a taxpayer qualifies for the automatic waiver under Rev. Proc. 91-71, the procedure described therein is the exclusive procedure available for obtaining a waiver of the rule contained in § 1504(a)(3)(A). The automatic waiver in Rev. Proc. 91-71 generally applies to any corporation that ceased to be a member of a group and rejoined the same group (i.e., the group remained in existence within the meaning of § 1.1502-75 of the Income Tax Regulations). The automatic waiver in Rev. Proc. 91-71 does not apply in this case because the Old Parent Group ceased to exist on Date 1.

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

Application of § 1504(a)(3)(A) of the Code is hereby waived. Provided that Parent and Sub 1, Sub 2, and Sub 3 constitute an affiliated group of corporations within the meaning of § 1504(a), Parent and Sub 1, Sub 2, and Sub 3 may join in the filing of a consolidated federal income tax return beginning with Date 4 and for subsequent years.

No opinion is expressed about the tax treatment of the transaction under any other provisions of the Code and regulations of about the tax treatment of any conditions existing at the time of, or effects resulting from, the transaction that are not specifically covered by the above ruling.

Temporary or final regulations pertaining to one or more of the issues addressed in this ruling have not yet been adopted. Therefore, this ruling will be modified or revoked by adoption of temporary or final regulations, to the extent the regulations are inconsistent with any conclusions in the ruling. See § 12.04 of Rev. Proc. 99-1, 1999-1 I.R.B. 6. However, when the criteria in § 12.05 of the Rev. Proc. are satisfied, a ruling is not revoked or modified retroactively, except in rare or unusual circumstances.

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

A copy of this letter should be attached to the federal income tax return of the taxpayers involved for the taxable year in which the transaction covered by this ruling letter is consummated.

Sincerely yours,  
Assistant Chief Counsel (Corporate)

By: \_\_\_\_\_  
Edward S. Cohen  
Chief, Branch 2