Part III. Administrative, Procedural, and Miscellaneous

26 CFR 601.201: Rulings and determination letters. (Also Part I §§ 1502, 1504; 1.1502–75, 1.1504–1.)

Rev. Proc. 2002–32

SECTION 1. PURPOSE

.01 This revenue procedure clarifies and supersedes Rev. Proc. 91–71 (1991–2 C.B. 900) which grants certain taxpayers a waiver of the general rule of § 1504 (a)(3)(A) of the Internal Revenue Code. Section 1504(a)(3)(A) generally provides that a corporation that ceased to be a member of a consolidated group (or a successor of such corporation) may not be included in any consolidated return filed by that affiliated group (or another affiliated group with the same common parent or a successor of such common parent) before the 61st month beginning after the first taxable year in which such corporation ceased to be a member of such group.

.02 If (1) § 1504(a)(3)(A) applies to prevent the inclusion of a corporation in a consolidated return, and (2) the representations described in sections 5.03 and 5.14 of this revenue procedure can be made with respect to such corporation, then such corporation may be included in the consolidated return for the taxable year that includes the date on which § 1504(a)(3)(A) would first apply to prevent such corporation from being included in such consolidated return if, and only if, an automatic waiver of the general rule of § 1504(a)(3)(A) is obtained pursuant to section 5 of this revenue procedure.

.03 If (1) § 1504(a)(3)(A) applies to prevent the inclusion of a corporation in a consolidated return, and (2) the representations described in section 5.03 or 5.14 of this revenue procedure cannot be made with respect to such corporation, then a waiver of the application of the general rule of § 1504(a)(3)(A) for any taxable year may only be obtained in the form of a private letter ruling pursuant to section 7 of this revenue procedure.

.04 If (1) § 1504(a)(3)(A) applies to prevent the inclusion of a corporation in a consolidated return, (2) the representations described in sections 5.03 and 5.14 of this revenue procedure can be made with respect to such corporation, and (3) the procedures for obtaining an automatic waiver of the general rule of § 1504 (a)(3)(A) are not followed, then a waiver of the application of the general rule of § 1504(a)(3)(A) may be obtained only for taxable years other than the taxable year that includes the date on which § 1504(a)(3)(A) first applies to prevent such corporation from being included in a consolidated return and may only be obtained in the form of a private letter ruling pursuant to section 7 of this revenue procedure.

SECTION 2. BACKGROUND

.01 Section 1504(a)(3)(A) provides that (1) if a corporation is included (or required to be included) in a consolidated return filed by an affiliated group for a taxable year that includes any period after December 31, 1984, and (2) the corporation ceases to be a member of such affiliated group in a taxable year beginning after December 31, 1984, the corporation (and any successor of the corporation) may not be included in any consolidated return filed by such affiliated group (or by another affiliated group with the same common parent or a successor of the 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)(B) provides that the Secretary may waive the application of § 1504(a)(3)(A) to any corporation for any period subject to such conditions as the Secretary may prescribe.

.02 For purposes of this revenue procedure, unless otherwise provided, a reference to a successor of a corporation includes each successor of a successor of such corporation, and a reference to a predecessor of a corporation includes each predecessor of a predecessor of such corporation.

SECTION 3. APPLICATION

.01 Any corporation described in section 4.01 of this revenue procedure that requests an automatic waiver by complying with the requirements set forth in section 5 of this revenue procedure is hereby granted a waiver under § 1504(a)(3)(B) so that the corporation may be included in the consolidated return filed (or required to be filed) by the affiliated group of which it is a member, as provided in section 6 of this revenue procedure. Any corporation described in section 4.01 of this revenue procedure that does not or cannot comply with the requirements set forth in section 5 may request a waiver of the application of the general rule of § 1504(a)(3)(A) pursuant to section 7 of this revenue procedure.

.02 If pursuant to section 4.02, 4.03, or 4.04 of this revenue procedure, § 1504(a)(3)(A) does not apply to prevent the inclusion in a consolidated return of a corporation, such corporation must be included in the consolidated return filed by the affiliated group of which it is a member. No waiver is necessary.

SECTION 4. SCOPE

.01 This revenue procedure applies to any corporation (a deconsolidated corporation) (1) that was included (or was required to be included), or whose predecessor was included (or was required to be included), in a consolidated return filed (or required to be filed) by an affiliated group (the original group), (2) that ceased, or whose predecessor ceased, to be a member of such original group, and (3) that subsequently became affiliated with that original group (or another affiliated group with the same common parent or a successor of such common parent) before the 61st month beginning after the first taxable year in which it or its predecessor ceased to be a member of the original group.

.02 Except as provided in section 4.05, § 1504(a)(3)(A) does not apply to prevent the inclusion in a consolidated return of any corporation that was a member of a consolidated group (the terminating group) and that ceased to be a member of such group solely as a result of a transaction in which a nonmember corporation acquired the assets of the common parent of the terminating group in a reorganization described in § 368(a)(1)(A), (C), (D), or (G) (but, with respect to a reorganization described in § 368(a)(1)(D) or (G), only if the requirements of § 354(b)(1)(A) and (B) are met), and immediately after

the acquisition, the acquiring corporation is the common parent of another affiliated group (the acquiring group). If the acquiring group files a consolidated return, all members of the terminating group that are includible corporations must be included in the consolidated return. See Rev. Rul. 91–70 (1991–2 C.B. 361).

.03 Except as provided in section 4.05, § 1504(a)(3)(A) does not apply to prevent the inclusion in a consolidated return of any corporation that was a member of a consolidated group (the terminating group) and that ceased to be a member of such group solely as a result of a transaction in which a member of the terminating group acquired (a) the assets of a nonmember corporation in a reorganization described in § 368(a)(1)(A), (C), (D), or (G) (but, with respect to a reorganization described in § 368(a)(1)(D) or (G), only if the requirements of § 354(b)(1)(A) and (B) are met) or (b) the stock of a nonmember corporation, and the acquisition was a reverse acquisition described in § 1.1502–75(d)(3) of the Income Tax Regulations in which the terminating group ceased to exist. If the group that remains in existence files a consolidated return, all members of the terminating group that are includible corporations must be included in the consolidated return. See Rev. Rul. 91–70.

.04 Except as provided in section 4.05, § 1504(a)(3)(A) does not apply to prevent the inclusion in a consolidated return of any corporation that was a member of a consolidated group (the terminating group) and that ceased to be a member of the terminating group solely as a result of a transaction in which (1) a nonmember corporation (the acquiring corporation) acquired (a) the assets of the common parent of the terminating group in a reorganization described in § 368(a)(1)(A), (C), (D), or (G) (but, with respect to a reorganization described in § 368(a)(1)(D) or (G), only if the requirements of § 354(b)(1)(A) and (B) are met) or (b) stock of the common parent of the terminating group that satisfies the requirements of § 1504(a)(2), (2) immediately after such acquisition, the acquiring corporation is a member of another affiliated group (the acquiring group), and (3) subsequent to such acquisition, the common parent of the acquiring group or a successor of the common parent of the acquiring group acquires assets or stock of the former common parent of the terminating group or a successor of such former common parent. If the acquiring group files a consolidated return, the corporation must be included in the consolidated return, provided such corporation is an includible corporation. Cf. Rev. Rul. 91–70.

.05 If a corporation is described in section 4.02, 4.03, or 4.04, and such corporation (or such corporation's predecessor, as applicable) (1) was included (or was required to be included) in a consolidated return filed (or required to be filed) by an affiliated group other than the terminating group (a prior group), (2) ceased to be a member of such prior group, and (3) subsequently became affiliated with such prior group (or another affiliated group with the same common parent or a successor of the common parent of such prior group) before the 61st month beginning after the first taxable year in which it or its predecessor ceased to be a member of such group, § 1504(a)(3)(A) applies to prevent the inclusion of such corporation in a consolidated return of such prior group or another affiliated group with the same common parent or a successor of the common parent of such prior group. Accordingly, that corporation is treated as a deconsolidated corporation and must comply with the requirements set forth in section 5 of this revenue procedure (or if it cannot comply with section 5, section 7) to obtain a waiver of § 1504(a)(3)(A).

SECTION 5. PROCEDURE FOR A DECONSOLIDATED CORPORATION TO REQUEST AN AUTOMATIC WAIVER UNDER SECTION 1504(a)(3)(B)

To obtain an automatic waiver of § 1504(a)(3)(A), the deconsolidated corporation must be included in a timely-filed consolidated return (including extensions) of the affiliated group with respect to which the waiver request relates (the current group), for the taxable year that includes the date on which such corporation most recently became a member of such affiliated group. In addition, a statement, filed under penalties of perjury, that includes the information described in sections 5.01 through 5.14 of this revenue procedure, which is subject to verification on examination, as provided by section 6.02 of this revenue procedure, must be attached to such return.

.01 The following heading typed or legibly printed at the top of the statement: "AUTOMATIC WAIVER OF THE APPLICATION OF SECTION 1504(a)(3) FILED PURSUANT TO REV. PROC. 2002–32."

.02 The name, address, and employer identification number of the deconsolidated corporation, and the name, address, and employer identification number of each corporation, if any, that was a predecessor of such deconsolidated corporation at any time on or after the date a predecessor of such deconsolidated corporation ceased to be a member of the current group (or another affiliated group with the same common parent or a predecessor of the common parent of the current group).

.03 If the common parent of the current group is the common parent of the group from which the deconsolidated corporation or its predecessor disaffiliated (the former group), a representation that such common parent was not an S corporation, an entity disregarded as an entity separate from its owner, a real estate investment trust, or a regulated investment company at any time during the period of disaffiliation. If the common parent of the current group was not the common parent of the former group, a representation that the common parent of the former group and each successor of the common parent of the former group was not an S corporation, an entity disregarded as an entity separate from its owner, a real estate investment trust, or a regulated investment company at any time during the period beginning on the date of disaffiliation and ending on the date that such common parent or successor ceased to exist. In addition, if the common parent of the current group was not the common parent of the former group, a representation that the common parent of the current group was not an S corporation, an entity disregarded as an entity separate from its owner, a real estate investment trust, or a regulated investment company at any time during the period beginning on the date that such

corporation became a successor of the common parent of the former group and ending on the date the deconsolidated corporation became a member of the current group.

.04 The year in which the current group elected to file consolidated returns.

.05 The date on which the deconsolidated corporation or its predecessor ceased to be a member of either the current group or the former group.

.06 The date on which the deconsolidated corporation most recently became a member of the current group.

.07 A description of the manner by which the deconsolidated corporation or its predecessor ceased to be a member of the current group or the former group and the manner by which the deconsolidated corporation became a member of the current group (redemption of stock, new issuance of stock, etc.). This statement should include the business purposes of the transactions that caused the disaffiliation and subsequent affiliation and describe whether the transactions were with a related party.

.08 If the common parent of the current group is the common parent of the former group and the former group remained in existence throughout the period of disaffiliation, the taxable income of the current group for (1) the taxable year prior to the taxable year in which the deconsolidated corporation or its predecessor ceased to be a member of the current group, (2) the taxable year in which the deconsolidated corporation or its predecessor ceased to be a member of such group, (3) each taxable year subsequent to the taxable year in which the deconsolidated corporation or its predecessor ceased to be a member of such group but before the deconsolidated corporation again became a member of the current group, and (4) the taxable year in which the deconsolidated corporation became a member of the current group.

.09 If the common parent of the current group is the common parent of the former group and the former group ceased to exist on or after the date on which the deconsolidated corporation or its predecessor ceased to be a member of the former group and before the date the deconsolidated corporation became a member of the current group, the taxable income of the former group for (1) the taxable year prior to the taxable year in which the deconsolidated corporation or its predecessor ceased to be a member of the former group, (2) the taxable year in which the deconsolidated corporation or its predecessor ceased to be a member of such group, and (3) each taxable year, if any, subsequent to the taxable year in which the deconsolidated corporation or its predecessor ceased to be a member of such group and during which such group existed. In addition, (1) the taxable income of the common parent of the former group or its successor for each interim taxable year (as defined herein) during which such common parent of the former group was not the common parent of a consolidated group, (2) the taxable income of any consolidated group other than the former group of which the common parent of the former group or its successor was the common parent during any interim taxable year for each interim taxable year, and (3) the taxable income of the current group for the taxable year in which the deconsolidated corporation became a member of the current group. For purposes of this section 5.09 and sections 5.10 and 5.11 of this revenue procedure, the term interim taxable year refers to any taxable year that is subsequent to the taxable year in which the deconsolidated corporation or its predecessor ceased to be a member of the former group but before the taxable year in which the deconsolidated corporation became a member of the current group.

.10 If the common parent of the current group is not the common parent of the former group, the taxable income of the former group for (1) the taxable year prior to the taxable year in which the deconsolidated corporation or its predecessor ceased to be a member of the former group, (2) the taxable year in which the deconsolidated corporation or its predecessor ceased to be a member of such group, and (3) each interim taxable year, if any, during which such group existed. In addition, (1) the taxable income of the common parent of the former group or its successor for each interim taxable year during which such common parent of the former group or its successor was not the common parent of a consolidated group, (2) the taxable income of any consolidated group other than the former group of which the common parent of the former group or its successor was the common parent during any interim taxable year for each interim taxable year, and (3) the taxable income of the current group for the taxable year in which the deconsolidated corporation became a member of the current group.

.11 The taxable income, or separate taxable income (adjusted for the items that would be taken into account in determining the consolidated net operating loss attributable to the deconsolidated corporation under § 1.1502–21(b)(2)(iv)), as the case may be, of the deconsolidated corporation or its predecessor, as applicable, for (1) the taxable year prior to the taxable year in which the deconsolidated corporation or its predecessor ceased to be a member of the current group or the former group, (2) the taxable year in which the deconsolidated corporation or its predecessor ceased to be a member of such group, (3) each interim taxable year, and (4) the taxable year in which the deconsolidated corporation became a member of the current group.

.12 An analysis of the effect of the disaffiliation and the effect of the subsequent consolidation on the following items of (a) the deconsolidated corporation and its predecessor, as applicable, (b) the current group, and (c) if the current group is not the group from which the deconsolidated corporation or its predecessor disaffiliated, the former group or, if the former group terminated as a result of the disaffiliation or during the period of the disaffiliation, the common parent of the former group and the members of the former group (or their successors, if applicable) with which such common parent (or its successor, as applicable) was affiliated at any time during the period of disaffiliation for all periods described in section 5.11 of this revenue procedure:

(1) Taxable income;

(2) Gains and losses on intercompany transactions;

(3) Excess loss accounts;

(4) Tax liability;

(5) Net operating loss carryovers;

(6) Capital loss carryovers;

(7) Tax credits; and

(8) Losses deferred pursuant to § 267 (f).

.13 In the case of a consolidated group of which one or more members are reporting corporations described in

§ 6038A(a), an analysis of the effect of the disaffiliation and the effect of the subsequent consolidation on the United States taxation of any related party within the meaning of § 6038A(c)(2) (other than a member of the group). Such analysis must take into account any transfers of money or property occurring during the period of disaffiliation and involving (directly or indirectly) the deconsolidated corporation, its predecessors, and any reporting corporation or related party, if such transfers are not in the ordinary course of business.

.14 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 have otherwise expired, or the use of a loss recognized on a disposition of stock of the deconsolidated corporation or a predecessor of such corporation. 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.

SECTION 6. EFFECT OF WAIVER

.01 A waiver under § 1504(a)(3)(B) granted pursuant to section 3.01 of this revenue procedure is binding on the consolidated group that files the statement required by section 5 of this revenue procedure with a consolidated return and may not be revoked by such consolidated group. The waiver is binding as of the date on which the deconsolidated corporation most recently became a member of the current group and as long as the deconsolidated corporation or a successor of such corporation remains a member of the current group or another group with a common parent that is a successor of the common parent of the current group, unless permission is granted for the entire group to cease filing a consolidated return.

.02 Notwithstanding section 6.01, if the Service determines that the information provided pursuant to section 5 of this revenue procedure was incorrect in any material respect at the time the waiver request was filed, the Service may revoke the waiver granted pursuant to this revenue procedure at any time, for all or any part of the period for which it was granted.

SECTION 7. DECONSOLIDATED CORPORATIONS THAT DO NOT QUALIFY FOR THE AUTOMATIC WAIVER

If a deconsolidated corporation cannot qualify for an automatic waiver pursuant to section 3.01 of this revenue procedure, a waiver under § 1504(a)(3)(B) may only be obtained through a letter ruling request filed in accordance with Rev. Proc. 2002–1 (2002–1 I.R.B. 1) (or similar revenue procedure applicable to a later year). If the representations described in sections 5.03 and 5.14 of this revenue procedure can be made with respect to such corporation and the procedures for obtaining an automatic waiver of the general rule of § 1504(a)(3)(A) are not followed, however, then a private letter ruling can only be obtained to waive the application of the general rule of § 1504(a)(3)(A) for taxable years other than the taxable year that includes the date on which § 1504(a)(3)(A) first applies to prevent such corporation from being included in the consolidated return. The letter ruling request must be submitted by the common parent of the affiliated group of which the deconsolidated corporation becomes a member before the due date (including extensions) of the consolidated return for the tax year with respect to which the waiver is requested. The letter ruling request must include the information set forth in section 5 of this revenue procedure. To the extent that the representations set forth in section 5.03 or section 5.14 of this revenue procedure cannot be made, however, the letter ruling request must: (1) contain information establishing that federal tax savings (as described in section 5.14 of this revenue procedure) was not a purpose of the disaffiliation, and that the amount of any federal tax savings attributable to the disaffiliation or a subsequent consolidation is not significant; and (2) state whether the deconsolidated corporation or a predecessor of such corporation was, at any time during the period of disaffiliation, in the effective control of any member (or successor of any member) of the current group or the former group.

SECTION 8. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 91–71 (1991–2 C.B. 900) is clarified, and, as clarified, is superseded.

SECTION 9. EFFECTIVE DATE

This revenue procedure is generally effective for consolidated returns due (including extensions) on or after May 20, 2002. Section 7 of this revenue procedure, however, applies to all letter ruling requests postmarked, or if not mailed, received, after May 20, 2002. Nonetheless, the Service may ask the taxpayer to submit information specified in this revenue procedure for any ruling requests postmarked, or if not mailed, received, before that date.

SECTION 10. PAPERWORK REDUCTION ACT

The collections of information contained in this revenue procedure have been reviewed and approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545–1784.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

The collections of information in this revenue procedure are in section 5 and section 7. This information is required to determine whether a taxpayer qualifies for a waiver under this revenue procedure. The collections of information are required to obtain a benefit. The likely respondents are corporations that were formerly members of consolidated groups and that later join affiliated groups.

The estimated total annual reporting burden is 100 hours.

The estimated annual burden per respondent varies from 2 hours to 8 hours, depending on individual circumstances, with an estimated average of 5 hours. The estimated number of respondents is 20.

The estimated annual frequency of responses is on occasion.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue tax law. Generally tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

SECTION 11. DRAFTING INFORMATION

The principal author of this revenue procedure is Vincent Daly of the Office of Associate Chief Counsel (Corporate). For further information regarding this revenue procedure, contact Mr. Daly at (202) 622–7770 (not a toll-free call).

---

26 CFR 601.105: Examination of returns and claims for refund, credit or abatement; determination of correct tax liability.
(Also Part I, §§ 56, 168, 179, 446, 1400L.)

Rev. Proc. 2002–33

SECTION 1. PURPOSE

This revenue procedure provides procedures for a taxpayer to claim the additional 30 percent depreciation (additional first year depreciation) provided by §§ 168(k) and 1400L(b) of the Internal Revenue Code and other deductions for qualified property or qualified New York Liberty Zone (Liberty Zone) property that the taxpayer did not claim on the taxpayer's federal tax return filed before June 1, 2002. This revenue procedure also explains how a taxpayer may elect not to deduct the additional first year depreciation for qualified property and Liberty Zone property.

SECTION 2. BACKGROUND

.01 Section 168(k), as added by § 101 of the Job Creation and Worker Assistance Act of 2002 (the Act), Pub. L. No. 107–147, 116 Stat. 21 (March 9, 2002), and § 1400L(b), as added by § 301(a) of the Act, generally allow an additional first year depreciation deduction for qualified property or Liberty Zone property placed in service by the taxpayer after September 10, 2001. The term "qualified property" is defined in § 168(k)(2) and the term "Liberty Zone property" is defined in § 1400L(b)(2). The additional first year depreciation deduction is allowed for both regular tax and alternative minimum tax purposes for the taxable year in which the qualified property or Liberty Zone property is placed in service. If the property is described in both § 168(k) and § 1400L(b), only one additional first year depreciation deduction is allowable for the property.

.02 The additional first year depreciation deduction generally is determined without any proration based on the length of the taxable year in which the qualified property or Liberty Zone property is placed in service. The additional first year depreciation is equal to 30 percent of the adjusted basis of the qualified property or Liberty Zone property. The adjusted basis of this property generally is its cost or other basis multiplied by the percentage of business/investment use, reduced by the amount of any § 179 expense deduction and adjusted to the extent provided by other provisions of the Code and the regulations thereunder (for example, reduced by the amount of the disabled access credit pursuant to § 44(d)(7)).

.03 Before computing the amount otherwise allowable as a depreciation deduction for the placed-in-service year and subsequent taxable years, the adjusted basis of the qualified property or Liberty Zone property for which the additional first year depreciation is deductible must be reduced by the amount of the additional first year depreciation deduction. The remaining adjusted basis of this property is depreciated using the applicable depreciation provisions under the Code for the property (that is, § 167(f)(1) for computer software and § 168 for other property). This depreciation deduction for the remaining adjusted basis of the qualified property or Liberty Zone property for which the additional first year depreciation is deductible is allowed for both regular tax and alternative minimum tax purposes.

.04 The additional first year depreciation must not be deducted for, among other things: (1) property that is required to be depreciated under the alternative depreciation system of § 168(g) pursuant to § 168(g)(1)(A) through (D) or other provisions of the Code (for example, property described in § 263A(e)(2)(A) or § 280F(b)(1)); (2) property described in § 168(f); or (3) any class of property for which the taxpayer elects not to deduct the additional first year depreciation (see section 3 of this revenue procedure for further details about this election).

.05 Pursuant to §§ 168(k)(2)(C)(ii) and 1400L(b)(2)(C)(iii), Liberty Zone leasehold improvement property (as defined in § 1400L(c)(2)) is not eligible for the additional first year depreciation deduction. However, in accordance with § 1400L(c), this property is included as 5-year property for purposes of § 168. The straight-line method of depreciation is required to be used under § 168 for Liberty Zone leasehold improvement property and the class life for this property for purposes of the alternative depreciation system of § 168(g) is 9 years.

.06 For § 179 property that is Liberty Zone property, § 1400L(f) increased the amount a taxpayer may elect to expense under § 179 by the lesser of (1) $35,000, or (2) the cost of § 179 property that is Liberty Zone property placed in service during the taxable year. Accordingly, the § 179 expense deduction that may be elected for § 179 property that is Liberty Zone property placed in service by the taxpayer after September 10, 2001, is increased (1) to a maximum of $55,000 for a taxable year that began in 2000, and (2) to a maximum of $59,000 for a taxable year that began in 2001.

SECTION 3. ELECTION NOT TO DEDUCT ADDITIONAL FIRST YEAR DEPRECIATION

.01 *In General*. Pursuant to §§ 168(k)(2)(C)(iii) and 1400L(b)(2)(C)(iv), a taxpayer may make an election not to deduct the additional first year depreciation for any class of property placed in service during the taxable year. If the taxpayer makes this election, it applies to all qualified property or Liberty Zone property that is in the same class and placed in service in the same taxable year. In addition, the depreciation adjustments under § 56 apply to that property for purposes of computing the taxpayer's alternative minimum taxable income. The election not to deduct the additional first year depreciation for any class of property placed in service during the taxable year is made separately by each person owning