Office of Chief Counsel
Internal Revenue Service

memorandum

CC:WR:RMD:DEN:TL-N-1840-01
WRDavis

date: MAY 1 2001

to: Large and Mid-Size Business, Communications, Technology & Media
Attn: Larry Falsetta, Acting Team Mgr. - [redacted]

from: Area Counsel
(Natural Resources:Houston)

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subject: **Request for Chief Counsel Assistance: [redacted] - Consent to Extend Statute of Limitations**

MODIFICATION AND SUPPLEMENTATION TO PRIOR ASSISTANCE

This memorandum supplements our response of May 1, 2001, to your request for assistance dated March 16, 2001. This memorandum should not be cited as precedent. All additions and changes are shown in **bold**.

CONCLUSIONS

The consent to extend should designate [redacted], as the agent for the consolidated return years of [redacted] consolidated group for the consolidated group tax years, [redacted], [redacted], and [redacted]. We agree with your proposed identification of the taxpayer to which the consent to extend applies as "[redacted] **(EIN:** [redacted]**)**, formerly **known as** [redacted] **(EIN:** [redacted]**)**", but suggest that you add an asterisk in the line for the name of the taxpayer. On the front of the Form 872, the asterisk should refer to the following: "* **This is with respect** to the consolidated tax liabilities of the [redacted] consolidated group for the taxable years ended [redacted], [redacted], and [redacted]."

In addition, we recommend having an officer of [redacted] sign the Form 872 and noting on the signature

block on page 2 of Form 872 as follows:

[name of current officer]

[title of officer]

[redacted]

ADDITIONAL RECOMMENDATIONS

1. We recommend entering the E.I.N. of [redacted] in the box on the Form 872 labeled "SSN or EIN."

2. We recommend confirming that [redacted] is still in existence when the Form 872 is secured.

3. If it has not already been done, we recommend that the agent verify the taxpayer's E.I.N.

4. Please note that IRM 121.2.22.3 requires the use of Letter 907(DO) to solicit the form 872, and IRM 121.2.22.4.2 requires use of Letter 929(DO) to return the signed Form 872 to the taxpayer. Dated copies of both letters should be retained in the case file as directed. When the signed Form 872 is received from the taxpayer, the responsible manager should promptly sign and date it in accordance with Treas. Reg. § 301.6501(c)-1(d) and IRM 121.2.22.3. The manager must also update the statute of limitations in the continuous case management statute control file and properly annotate Form 895 or equivalent. See IRM 4531.2 and 4534. This includes Form 5348. In the event a Form 872 becomes separated from the file or lost, these other documents would become invaluable to establish the agreement.

Please refer questions regarding this memorandum to Bill Davis at (303) 844-3258.

BERNARD B. NELSON
Area Counsel
(Natural Resources:Houston)

By:_____
DAVID J. MUNGO
Associate Area Counsel (LMSB:NR)
Denver

Office of Chief Counsel
Internal Revenue Service

memorandum

CC:WR:RMD:DEN:TL-N-1840-01
WRDavis

date: 1 MAY 2001

to: Large and Mid-Size Business, Communications, Technology & Media
Attn: Larry Falsetta, Acting Team Mgr. - [redacted]

from: Area Counsel
(Natural Resources:Houston)

subject: **Request for Chief Counsel Assistance: [redacted] - Consent to Extend Statute of Limitations**

This memorandum responds to your request for assistance dated March 16, 2001. This memorandum should not be cited as precedent.

We respond to your memorandum seeking our opinion as to the proper parties and language to include on consents to extend the statute of limitations on assessment for [redacted] for the taxable years [redacted], [redacted], and [redacted]. Our understanding of the facts, analysis of the issues, and conclusions are set forth below.

ISSUES

What is the correct wording of a consent to extend the statute of limitations upon assessment of income tax for [redacted] (taxpayer) for its taxable years [redacted], [redacted], and [redacted]?

CONCLUSIONS

The consent to extend should designate [redacted], as the agent for the consolidated return years of [redacted] consolidated group for the consolidated group tax years, [redacted], [redacted], and [redacted]. We agree with your proposed identification of the taxpayer to which the consent to extend applies as "[redacted], formerly named [redacted]", but suggest that you add an asterisk in the line for the name of the taxpayer. On the front of the Form 872, the asterisk should refer to the

following: "* With regard to the consolidated tax liabilities of the [redacted] (E.I.N. [redacted]) [redacted] consolidated group for the taxable years ended [redacted], [redacted], and [redacted]."

FACTS

Consolidated corporate income tax returns were filed for [redacted] ("[redacted]"), E.I.N. [redacted], for its consolidated return years [redacted], [redacted], and [redacted], apparently in accordance with I.R.C. § 1501 et seq. and the regulations thereunder. [redacted] was incorporated under the laws of the State of Colorado. We assume that the statutes of limitation on assessment for these taxable years have not expired as a result of previous agreement(s) to extend the statute.

In early [redacted], [redacted], a [redacted] corporation, acquired all of the stock of [redacted], the common parent of a consolidated group of U.S. mining companies. To our knowledge, [redacted] has, at all times since [redacted]'s acquisition, maintained its corporate existence, modified only through a change of name.

On [redacted], [redacted] filed "Articles of Amendment to Articles of Incorporation of [redacted]" (copy attached) changing its name to [redacted]. An e-mail dated [redacted], reflects that, in addition to this name change, other corporations, including [redacted], and [redacted], two corporations identified as being wholly-owned by [redacted] at the time of [redacted]'s acquisition of [redacted], underwent name changes, but remained in existence thereafter. To our knowledge, [redacted] has remained the common U.S. parent for [redacted]'s interest in U.S. corporations acquired through the [redacted] acquisition.

ANALYSIS

Generally, section 6501(a) limits assessment of income tax to the period ending three years after the return for that tax period is filed. Among the exceptions to this three-year rule, the consent of both the Service and the taxpayer, in writing, to an extension of this period for assessment will extend this period when such an agreement is executed before the expiration of the assessment period. Section 6501(c)(4).

The common parent is generally the sole agent for each

member of the consolidated group, duly authorized to act in its own name, in all matters relating to the tax liability for the consolidated return year. Moreover, the common parent is generally the proper party to sign consents. Treas. Reg. § 1.1502-77(a).

Here, inasmuch as the name change does not affect the continuity of [redacted]'s existence, that corporation, with its new name, remains the common parent of the [redacted] consolidated group for the taxable years for which [redacted] filed a consolidated return as the common parent of that affiliated group.

Treas. Reg. § 1.1502-75(d)(2)(i) holds that "the common parent corporation shall remain as the common parent irrespective of a mere change in identity, form, or place of organization of such common parent corporation (see section 368(a)(1)(F))." Under these facts, the mere change in identity effected by name change of [redacted] to [redacted], does not change this corporation's position as the common parent of [redacted] and subsidiaries' affiliated group that filed consolidated returns for [redacted], [redacted], and [redacted].

Please refer questions regarding this memorandum to Bill Davis at (303) 844-3258.

BERNARD B. NELSON
Area Counsel
(Natural Resources:Houston)

By: _____
MICHAEL J. COOPER
Acting Associate Area Counsel
(LMSB:NR) Denver

Attachment