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Attn: Joyce M. Costello, Revenue Agent

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TL-N-4188-01
JEBecker, Jr.

Nondocketed Case Advice
[redacted] Form 872 language

This memorandum responds to your request for advice in connection with the solicitation of waivers to extend the statute of limitations to assess tax on various corporations for various taxable periods. This memorandum should not be cited as precedent.

This writing may contain privileged information. Any unauthorized disclosure of this writing may have an adverse effect on privileges, such as the attorney client privilege. If disclosure becomes necessary, please contact this office for our views.

ISSUES

1. Is Form 872-I the proper form to use to extend the statute of limitations for all LMSB corporations?

2. Who is the proper party to sign a waiver to extend the statute of limitations for the assessment of tax for the taxable years [redacted] and [redacted] of [redacted] (EIN: [redacted]) and [redacted]? What language, if any, should be added to the waiver form?

3. Who is the proper party to sign a waiver to extend the statute of limitations for the assessment of tax for the short taxable periods from [redacted] through [redacted] and from [redacted] through [redacted] of [redacted] (EIN: [redacted]) [redacted]? What language, if any, should be added to the waiver form?

4. Who is the proper party to sign a waiver to extend the statute of limitations for the assessment of tax of:

(1) [redacted] (EIN: [redacted]) and [redacted], for the short taxable period from [redacted] through [redacted]? What language, if any, should be added to the waiver form?

(2) [redacted] (EIN: [redacted]) and [redacted], for the short taxable period from [redacted] through [redacted]? What language, if any, should be added to the waiver form?

(3) [redacted] (EIN: [redacted]) [redacted] for the taxable year [redacted]? What language, if any, should be added to the waiver form?

5. Who is the proper party to sign a waiver to extend the statute of limitations for the assessment of tax of [redacted] (EIN: [redacted]), for the taxable year [redacted] and the short taxable period from [redacted] through [redacted]? What additional language, if any, should be added to the waiver form?

FACTS

During [redacted], [redacted] was owned by [redacted], a foreign corporation. On [redacted], [redacted] and [redacted], another foreign corporation, merged and became [redacted]. At this time, [redacted] changed its name to [redacted]. It is still in existence. The taxable years for which waivers are to be sought are [redacted] and [redacted].

From [redacted] through [redacted], [redacted] was the parent of its own consolidated group and was not the subsidiary of any other entity. On [redacted], [redacted] was acquired as a subsidiary by [redacted] and [redacted], which changed its own name to [redacted]. [redacted] is still in existence. The taxable periods for which waivers are to be sought are the short periods from [redacted] through [redacted] and from [redacted] through [redacted].

From [redacted] through [redacted], [redacted] and their subsidiaries were part of the consolidated group of [redacted], the highest tier domestic corporation. In [redacted], [redacted] and [redacted], a foreign parent of [redacted], transferred [redacted] and [redacted] and their subsidiaries to a new foreign corporation, [redacted], another foreign corporation. On [redacted], [redacted] merged, with [redacted] as the surviving entity. It is still in existence. The waivers to be sought are for [redacted] for the short period from [redacted] through [redacted], for [redacted] for the short period from [redacted] through [redacted], and for [redacted] for the taxable year [redacted].

[redacted] was not part of a consolidated group for the taxable year [redacted] and for the period from [redacted] through [redacted]. On [redacted], [redacted] was acquired as a subsidiary by and became part of the consolidated group of [redacted]. [redacted] is still in existence. The taxable periods for which waivers are being sought are the taxable year [redacted] and the short taxable period from [redacted] through [redacted].

DISCUSSION

A few basic principles apply to the situations which you have presented to us. A corporation which is the highest tier domestic corporation and the parent of a consolidated group is the proper party to extend the statute of limitations for itself and that group for the years during which that status continues, even though such corporation later joins another consolidated group as a subsidiary. Where a corporation merges into another corporation and the other corporation survives, the other corporation, which is the successor in interest to the first corporation, is the proper party to extend the statute of limitations for the years of the first corporation prior to the merger. Consideration must also be given to the transferee liability of the other corporation for the taxes of the first corporation. A stand-alone corporation remains the proper party to extend the statute of limitations for its stand-alone years, even if the stand-alone corporation later joins a consolidated group.

CONCLUSIONS

The following conclusions are based solely upon the facts which you presented to us.

1. It is our understanding that a Form 872-I should be used to extend the statute of limitations for all LMSB corporations.

2. With respect to a waiver for [redacted] for the taxable years [redacted] and [redacted], since it is still in existence, but under the new name, [redacted], the following language should appear in the caption of the waiver form:

"[redacted] (EIN: [redacted]) & [redacted], formerly [redacted]."

3. With respect to a waiver for [redacted] (EIN: [redacted]) [redacted] for the short taxable periods from [redacted] through [redacted] and from [redacted] through [redacted], since it is still in existence, the waiver form should be solicited directly from it. The fact that after [redacted] it became a subsidiary of [redacted] and was part of that consolidated group is irrelevant to the periods prior to that date.

4. (1) through (3). The waivers to be sought are for [redacted] for the short period from [redacted] through [redacted], for [redacted] for the short period from [redacted] through [redacted], and for [redacted] for the taxable year [redacted]. Neither [redacted] nor [redacted] are still in existence. [redacted], which resulted from the merger of [redacted] and [redacted], is still in existence. Accordingly, the waiver form should be solicited from [redacted] for the short period from [redacted] through [redacted] and for the taxable year [redacted]. The following language should appear in the caption of the waiver form:

"[redacted] (EIN: [redacted]) & [redacted], successor in interest to [redacted], and successor in interest to [redacted]."

To preserve the statute of limitations for transferee liability, a Form 2045 (Transferee Agreement) and a Form 977 (Consent to Extend the Time to Assess Liability at Law or in Equity for Income, Gift, and Estate Tax Against a Transferee or Fiduciary) should be sought from [redacted] for [redacted]. and for [redacted]

5. With respect to a waiver for [redacted] (EIN: [redacted]) for the taxable year [redacted] and for the short period from [redacted] through [redacted], since it is still in existence, the waiver form should be solicited directly from it. The fact that after [redacted] it became a subsidiary of [redacted] and was part of that consolidated group is irrelevant to the periods prior to that date.

If you have any questions concerning this memorandum, please call Attorney John E. Becker, Jr. at 215-597-3442.

Our advice is subject to the Office of Chief Counsel's ten day post-review procedures. If the Office of Chief Counsel alters or revises our advice they will contact us within ten working days from their receipt of our advice.

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cc: Senior Legal Counsel (HQ) Harve M. Lewis
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