Office of Chief Counsel
Internal Revenue Service

memorandum

CC:LM:MCT:CLE:PIT:POSTF-160964-01
MAYost

date: November 9, 2001

to: Kathy J. Beck, Team Manager, LMSB:1453
[redacted] Audit

from: Associate Area Counsel, LM:HMT:CLE:PIT

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subject: **Extension of Statute of Limitations**
[redacted]
U.I.L. No. 1502.77-00

This memorandum responds to your request for assistance dated November 5, 2001. The advice rendered in this memorandum is conditioned on the accuracy of the facts provided by you. This memorandum should not be cited as precedent. It is also subject to 10-day post review in the National Office and, therefore, may be modified.

ISSUE

Whether [redacted] remains the agent for its old consolidated group for the short tax year prior to its acquisition by [redacted] and can execute a consent extending the statute of limitations for such year?

CONCLUSIONS

[redacted] remained the agent for its old consolidated group for the short tax year prior to its acquisition by [redacted] and can execute a consent extending the statute of limitations for such year.

We recommend that a Form 872-I be used instead of a Form 872. The utility of the Form 872-I is that it extends the I.R.C. § 6501 statute for all purposes, similar to a "regular" Form 872, but the Form 872-I also protects the statute of limitations for adjustments stemming from known and unknown partnerships. Of course, if you become aware of a partnership and are going to open an examination, you should also solicit a Form 872-P from the partnership that should be signed by the tax matters partner so as to also protect the statute of limitations on any flow-through adjustments against other partners who may or may not be currently under audit.

You should caption the Form 872-I to read: "[redacted]". Place an asterisk immediately after the word "Subsidiaries." At the bottom of the first page of the Form 872-I, place another asterisk and insert the following:

> "With respect to the consolidated tax liability of [redacted] consolidated group for the tax year ended [redacted]."

Further, at the top right hand corner of the consent form, the EIN of [redacted] should be inserted.

Finally, the Form 872-I should be executed by a current officer of [redacted] who has authority to sign the consent on behalf of the corporation.

FACTS

[redacted] was the common parent of an affiliated group of corporations. As common parent, [redacted] filed a consolidated return for the short period ended [redacted].

On [redacted], [redacted] was acquired by [redacted]. To implement the acquisition, [redacted] set up a subsidiary, known as [redacted], which was merged into [redacted], with the latter surviving. The former shareholders of [redacted] received stock and other consideration from [redacted]. After the merger, [redacted] became a wholly-owned subsidiary of [redacted].

Your team coordinator wants to solicit a consent to extend the statute of limitations for [redacted] with respect to its final tax return for the period ended [redacted]. The statute of limitations for this tax year will expire on [redacted].

LAW AND ANALYSIS

[redacted] filed a consolidated return for the short tax period beginning [redacted] and ending [redacted]. By filing a consolidated return, [redacted] and the other members of its consolidated group consented to be bound by the consolidated return regulations. I.R.C. § 1501; Craigie v. Commissioner, 84 T.C. 466, 471 (1985), citing Ilfeld Co. v. Hernandez, 292 U.S. 62 (1934).

Under Treas. Reg. § 1.1502-77(a), the common parent of the consolidated group is the sole agent for each subsidiary in the group and duly authorized to act in its own name in all matters relating to the consolidated tax liability of the group, including the execution of consents to extend the statute of limitations. The common parent remains the agent for the members of the group for any years during which it was the common parent, whether or not consolidated returns are filed in subsequent years and whether or not one or more subsidiaries have become or have ceased to be members of the group. Thus, where the common parent remains in existence, even if it is no longer the common parent, it remains the agent for the group with regard to years in which it was the common parent of the group. Id.; see also, Union Oil Company of California v. Commissioner, 101 T.C. 130 (1993).

In 1988, the Service issued temporary regulations under I.R.C. § 1502.[1] For taxable years for which the due date of the consolidated return (without extensions) is after September 7, 1988, Temp. Treas. Reg. § 1.1502-77T provides alternative agents for purposes of extending the statute of limitations for a consolidated group. Under this regulation, where the common parent of the group ceases to be the common parent, whether or not the consolidated group remains in existence, a consent can be obtained from any one of several alternative agents for the group. The alternative agents under Temp. Treas. Reg. § 1.502-77(a)(4) are:

> (i) The common parent of the group for all or any part of the tax year to which the consent applies;
>
> (ii) A successor to the former common parent in a transaction to which I.R.C. § 381(a) applies;
>
> (iii) The agent designated by the group under Treas. Reg. § 1.1502-77(d); or
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> (iv) If the group remains in existence after a reverse acquisition or downstream transfer, the common parent of the group at the time

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[1] Proposed regulations amending this regulation and removing § 1.1502-77T were published on September 26, 2000. The proposed regulations are to apply to consolidated return years beginning on or after the date final regulations are published in the Federal Register. Until then, the current rules set forth in §§ 1.1502-77 and 1.1502-77T continue to apply.

the consent is given.[2]

Clearly, Temp. Treas. Reg. § 1.1502-77T(a)(4)(i) also applies in this case. [redacted], the common parent of the consolidated group during the tax year at issue, has ceased to be the common parent, but remains in existence under state law. Further, the due date for the consolidated return for the short year in question is after September 7, 1988.

Accordingly, even under Temp. Treas. Reg. §1.1502-77T(a)(4)(i), [redacted] continues to have authority to act as the agent for the members of its old consolidated group for the short tax year ended [redacted] for which it was the common parent, despite the fact that the consolidated group no longer exists. See also, Treas. Reg. § 1.1502-77(a).

Finally, it should be remembered that the consent must be executed by an authorized officer of [redacted]. The regulations under I.R.C. § 6501(c)(4) do not specify who may sign consents. The Service, therefore, resorts to the rules applicable to the execution of returns to determine who has the authority to sign consents. Rev. Rul. 83-41, 1983-1 C.B. 399. In the case of corporate returns, I.R.C. § 6062 provides that a corporation's income tax return must be signed by the president, vice-president, treasurer, assistant treasurer, chief accounting officer or any other officer duly authorized to act. Thus, one of these corporate officers should sign the consent on behalf of [redacted].

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.

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[2] For purposes of our analysis, we assume that [redacted]'s merger with [redacted] did not constitute a reverse acquisition. Based upon information provided by your team coordinator, the shareholders of [redacted] did not receive in exchange for their [redacted] stock over 50% of [redacted]'s outstanding stock. Further, [redacted] filed a short year tax return, indicating that the group ceased to exist.

If you have any questions, please call Attorney Michael A. Yost, Jr. at (412) 644-3441.

RICHARD S. BLOOM
Associate Area Counsel (LMSB)

By:_____
MICHAEL A. YOST, JR.
Senior Attorney (LMSB)