Office of Chief Counsel
Internal Revenue Service

memorandum

CC:LM:MCT:PHI:TL-N-829-01
JRGilbert

date: MAY 25 2001

to: James F. Brandau, Jr., Case Manager, Group 1543
(King of Prussia P.O.D.)

from: Associate Area Counsel (LM:MCT) - Philadelphia

subject: [redacted] **- Extension of Statute of Limitations - Forms 872**

DISCLOSURE STATEMENT

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

DISCUSSION

This memorandum supersedes our memorandum to you dated May 14, 2001, and it responds to your request for assistance of May 1, 2001 sent via e-mail to attorney John R. Gilbert. This memorandum should not be cited as precedent. You have requested our advice regarding the correct captions for Forms 872, Consent To Extend The Time To Assess Tax, for tax returns concerning the [redacted] consolidated group.[1]

ISSUE

How should the taxpayer be identified on the Forms 872 or 872-A to be executed to extend the statute of limitations for assessment and collection ?

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[1] The attachments to your e-mail mention [redacted], a Delaware limited partnership. We have been informed by Team Coordinator Pat Nicastro that you do not require any assistance in preparing statute extension forms for this entity, because the Forms 1065 filed by it have been surveyed.

CONCLUSION

1. [redacted] and [redacted]

For the [redacted] and [redacted] consolidated returns, any Forms 872 or 872-A should be prepared in the name of [redacted] **(Doing Business As** [redacted]**), formerly known as** [redacted]*

*** This is in respect to the consolidated tax liability of the** [redacted] **consolidated group for the taxable year** _____.
[Fill in blank as appropriate for [redacted] and/or [redacted].]

In addition, we recommend having an officer of [redacted] sign the Form 872 (or Form 872-A) and noting on the signature block on page 2 of the Form 872 (or Form 872-A) as follows:

[name of current officer]
[title of officer]
[redacted] **(Doing Business As** [redacted]**)**

2. [redacted]

For the [redacted] consolidated return, any Forms 872 or 872-A should be prepared in the name of [redacted] **, formerly known as** [redacted]*

*** This in with respect to the consolidated tax liability of the** [redacted] **consolidated group for the taxable year** [redacted].

In addition, we recommend having an officer of [redacted] sign the Form 872 and noting on the signature block on page 2 of the Form 872 as follows:

[name of officer]
[title of officer]
[redacted]

Please also note that for all years, IRM 121.2.22.3 requires 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.

FACTS

For calendar years [redacted] and [redacted], consolidated Forms 1120 were filed for the consolidated [redacted] group with [redacted], being the Common Parent of the group. As the [redacted] consolidated Form 1120 was filed on [redacted], the three year statute of limitation on assessment and collection per I.R.C. § 6501(a) expires on [redacted].

On [redacted], [redacted]'s sole shareholder, [redacted], a Swiss corporation, formed [redacted], a Delaware holding corporation. On [redacted] transferred all of its shares in [redacted] to [redacted] in a § 351 transaction. For calendar year [redacted], a consolidated Form 1120 was filed for the consolidated [redacted] group with [redacted] being the Common Parent of the group. [redacted] continued in existence in [redacted] as a subsidiary of [redacted].

The ultimate parent of the [redacted] group for [redacted] through [redacted] was the United Kingdom ("U.K.") corporation [redacted]. [redacted]'s legal department has informed you that on [redacted], [redacted] was joined with the U.K. corporation [redacted], in a transaction whereby the shareholders of [redacted] and [redacted] became shareholders of [redacted], a newly formed, publicly traded holding company, and [redacted] became the sole shareholder of both [redacted] and [redacted]. No other changes in corporate names or corporate entity ownership were effected by the joining of the U.K. parent companies.

[redacted]'s legal department has also informed you that on [redacted], [redacted], a Delaware corporation, merged with and into [redacted]. In the merger, the name of the surviving company was changed to [redacted]. As a consequence of the merger, [redacted] became the sole shareholder of both [redacted], a North Carolina corporation, and [redacted].

[redacted]'s legal department has further indicated that on [redacted], [redacted] merged with and into [redacted], and [redacted]'s legal name was changed to "[redacted] (Doing Business As [redacted])."

ANALYSIS

The common parent of a consolidated income tax is the proper party to extend the statute of limitations on behalf of itself and the consolidated group, in accordance with Treas. Reg. § 1.1502-77, and it remains so as long as it remains in existence.

The facts in the instant case indicate that the common parent for the [redacted] group in [redacted] and [redacted], [redacted] survived the [redacted] merger with [redacted], and as such it is still in existence. Accordingly, any Forms 872 or 872-A for the [redacted] consolidated returns for [redacted] and [redacted] should be prepared in the name of [redacted] **(Doing Business As** [redacted]**, formerly known as** [redacted]***.**

*** This is in respect to the consolidated tax liability of the** [redacted] **consolidated group for the taxable year** _____.
[Fill in blank as appropriate for [redacted] and/or [redacted].]

In addition, we recommend having an officer of [redacted] sign the Form 872 (or Form 872-A) and noting on the signature block on page 2 of the Form 872 (or Form 872-A) as follows:

[name of current officer]
[title of officer]
[redacted] **(Doing Business As** [redacted]

The facts herein also indicate that the common parent for the [redacted] group in [redacted], [redacted], also survived its

[redacted] merger with [redacted], but that its name was changed. If it should become necessary to extend the statute of limitations for the [redacted] consolidated group for [redacted], the Form 872 (or Form 872-A) should be prepared in the name of [redacted][2], **formerly known as** [redacted]*

*** This in with respect to the consolidated tax liability of the** [redacted] **consolidated group for the taxable year** [redacted].

In addition, we recommend having an officer of [redacted], sign the Form 872 (or Form 872-A) and noting on the signature block on page 2 of the Form 872 (or Form 872-A) as follows:

[name of officer]
[title of officer]
[redacted]

This concludes our advice and recommendation. Please feel free to call Attorney John R. Gilbert at 215-597-3442 with any additional questions you may have.

JAMES C. FEE, JR.
Associate Area Counsel (LMSB)

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[2] At that future date, we recommend confirming that [redacted], is still in existence when the Form 872 (or Form 872-A) is secured.