Office of Chief Counsel
Internal Revenue Service

memorandum

CC:LM:FSH:BOS:TL-N-6167-00
BJLaterman

date: MAR 29 2001

to: Kevin Benner, Team Manager
LMSB: Financial Services and Healthcare
Group 1128, Territory 1120

from: Associate Area Counsel, LMSB, Boston

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subject: [redacted]
[redacted] **through** [redacted] **Statute Extensions**
Statute Expiration: [redacted]

This is in response to your request that we provide advice regarding extending the statute of limitations for the above-mentioned consolidated group's [redacted] through [redacted] taxable years.

[redacted], a Delaware Corporation, was the parent corporation of an affiliated group of corporations which filed consolidated federal income tax returns for the taxable years [redacted] through [redacted]. [redacted] is a public limited company incorporated in England and Wales. [redacted] is a Delaware corporation and a wholly owned subsidiary of [redacted]. On [redacted], [redacted], [redacted] and [redacted] entered into an Agreement and Plan of Merger which provided that [redacted] would acquire all the outstanding stock of [redacted] pursuant to the merger of [redacted] with and into [redacted]. The Agreement and Plan of Merger further provided that [redacted] shall be the surviving corporation in the merger and shall continue its separate corporate existence. On [redacted], the certificate of Ownership and Merger which merges [redacted] into [redacted] was received and filed in the Office of the Secretary of the State of Delaware.

Generally, the common parent, with certain exceptions not applicable here, is the sole agent for each member of the group, duly authorized to act in its own name in all matters relating to the tax liability for the consolidated return year. Treas. Reg. § 1.1502-77(a). The common parent in its

name will give waivers, and any waiver so given, shall be considered as having also been given or executed by each such subsidiary. Treas. Reg. § 1.1502-77(a). Thus, generally the common parent is the proper party to sign consents, including the Form 872 waiver to extend the period of limitations, for all members in the group. Treas. Reg. § 1.1502-77(a). Furthermore, the provisions of Treas. Reg. § 1.1502-77(a) shall apply whether or not a consolidated return is made for any subsequent year, and whether or not one or more subsidiaries have become or have ceased to be members of the group at any time.

Treas. Reg. § 1.1502-77(c) provides that, unless the District Director agrees to the contrary, an agreement entered into by the common parent extending the time within which an assessment may be made in respect of the tax for a consolidated return year, shall be applicable to each corporation which was a member of the group during any part of such taxable year. The common parent and each subsidiary which was a member of the consolidated group during any part of the consolidated return year is severally liable for the tax for such year. Treas. Reg. § 1.1502-6(a).

Temporary Regulation § 1.1502-77T(a)(4) provides for agents if the common parent ceases to be common parent of the consolidated group, whether or not the consolidated group remains in existence. Pursuant to Temporary Regulation § 1.1502-77T(a)(4), an agent for the group is:

> (i) The common parent of the group for all or any part of the year to which the notice or waiver applies.

Temporary Regulation § 1.1502-77T(a)(4) is applicable to waivers of the statute of limitations for taxable years for which the due date without extensions of the consolidated return is after September 7, 1988. Temp. Reg. § 1.1502-77T(a)(3). Therefore, said regulation provision is applicable in this case.

In this case, the common parent, [redacted], is still in existence and, therefore, it is still the agent for the consolidated group (in existence in [redacted] through [redacted]) under the provisions of Temporary Regulation § 1.1502-77T(a)(4)(i). The caption on the Form 872 should be: [redacted] * At the bottom of the page you should add: * [redacted] has executed the Form 872 as agent for the [redacted] consolidated

group for its [redacted], [redacted] and [redacted] taxable years. Therefore, based on the facts[1] provided we conclude that a Form 872 executed by a current officer of [redacted], the still existing parent of the group for the [redacted] through [redacted] taxable years will extend the period for assessment of tax for said taxable years.

Furthermore, I.R.C. § 6501(c)(A)(B) provides that the Service shall notify the taxpayer of their right: 1) to refuse to extend the period of limitations; or 2) to limit such extension to particular issues; or 3) to limit the extension to a particular period of time. This notice must be provided each time an extension is requested.

If we can be of any further assistance, please feel free to contact the undersigned at 617-565-7855.

BARRY J. LATERMAN
Special Litigation Assistant

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[1] We note that our advice is based on our understanding that the [redacted] from whom you will solicit the extension is the same corporation that was the common parent for [redacted] through [redacted]. You have confirmed that the EIN is the same as that set forth on the returns for [redacted] through [redacted].