Office of Chief Counsel
Internal Revenue Service

memorandum

CC:NER:MAN:TL-N-3202-98
FPetrino

date:

to: Chief Examination Division, Manhattan
Attn: Dennis C. Lapiotis, Case Manager,
E:1469

from: District Counsel, Manhattan ,

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subject: Request for Advice U.I.L. 6501.08-17
[redacted]
Extension of Statute of Limitations
Tax Years Ended: [redacted] through [redacted]

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ISSUES

Who is the proper party to sign the Form 872 with respect to the [redacted] group for the tax years [redacted].

CONCLUSION

We recommend that both the successor of [redacted] (the alternative agent) and [redacted] should sign the Form 872.

FACTS

[redacted], the common parent of the [redacted] group for the tax years in question, merged into a subsidiary of [redacted] on [redacted]. [redacted] shareholders received shares of [redacted] as consideration and a question arose concerning the status of the merger as a possible reverse acquisition. The Service has take the position that Treas. Reg. § 1.1502-75(d)(3) applies due to the existence of certain stock and affiliate stock ownership. The Taxpayer disagrees. In accordance with the taxpayer's description of the re-organization, [redacted] did not survive the merger and [redacted] changed its name to

[redacted].

DISCUSSION

The common parent, except as provided, shall be the sole agent for each subsidiary in the group, duly authorized to act in its own name in all matters relating to the tax liability for the consolidated return years in question. Treas. Reg. 1.1502-77. If the common parent ceases to exist, Treas. Reg. 1.1502-77(d) provides that the common parent, before its termination, may designate another member of the group to be the agent, or the remaining members may designate another member as the agent. If the district director approves such a designation, the designated member becomes the new agent for the group. In the absence of such a designation by the former common parent, the remaining members of the group, subject to the approval of the district director, may designate another member to act as agent for the group.

In addition, Temp. Treas. Reg. 1.1502-77T provides for an alternative agent for the group, for purposes of executing consents to extend the statute of limitations or mailing a notice of deficiency. One of these alternative agents is a successor to the former common parent in a transaction to which section 381 applies. In general, with respect to re-organizations, I.R.C. § 381 only applies to re-reorganizations described in Subparagraph (A), (C), (D), (F), or (G) of I.R.C. § 368(a)(1). Therefore, in the instant case, when [redacted] allegedly merged into the subsidiary of [redacted], the subsidiary of [redacted] became a successor to [redacted], the former common parent of the [redacted] group (assuming a proper merger under state law). Accordingly, the subsidiary of [redacted] could be the proper agent to sign the Form 872 for the [redacted] group for the years in question.

However, we note that the Assistant Chief Counsel (Corporate) takes the position that the [redacted] merger between [redacted] and the subsidiary of [redacted] was a reverse acquisition under Treas. Reg. 1.1502-75(d)(3). Under this view, the [redacted] group continued with [redacted] (formerly [redacted]) as the common parent, and the [redacted] group ceased to exist. We understand however, that [redacted] disagrees with this view, and the question may not be settled for some time.

In Southern Pacific v. Commissioner, 84 T.C. 375, the court held that when A acquired B in a merger it constituted a reverse acquisition. The court held that A, the common parent of the acquiring group, could be agent for the continuing acquired group, for all matters relating to the tax liability of the continuing group for the tax years in question. If the [redacted] merger is indeed a reverse acquisition, it could be argued that, under Southern

Pacific, [redacted] (formerly [redacted] is the agent for the [redacted] group for years prior to the acquisition, and thus would be the proper party to sign both the 872 and the closing agreement.

Because of the uncertainty about the reverse acquisition, we do not advise relying on the successor of [redacted] as the agent for the [redacted] group for the years prior to the [redacted] merger transaction since I.R.C. § 381 may not apply to this re-organization (the re-organizations could conceivably fall under sub-paragraph B or E of I.R.C. § 368(a)(1)). Therefore, we advise that in addition to the successor of [redacted], that [redacted] also sign the Form 872.

If you should have any additional questions regarding this matter, please contact Frederick Petrino at (212) 264-1595 Ext 294.

LINDA R. DETTERY
District Counsel

By: _____
PETER J. LABELLE
Assistant District Counsel

Noted:

_____
LINDA R. DETTERY
District Counsel

cc: Michael P. Corrado (by E-Mail)
Assistant Regional Counsel (TL)

Mary Helen Weber (by E-Mail)
Assistant Regional Counsel (LC)

Paulette Segal (by E-Mail)
Acting Assistant Regional Counsel (LC)

Theodore R. Leighton
Assistant District Counsel