Office of Chief Counsel
Internal Revenue Service

memorandum

CC:MSR:AOK:OKL:TL-N-4690-99
BASmith

date: SEP 0 9 1999

to: Chief, Examination Division, Arkansas-Oklahoma District
Attn: Steve Weaver

from: District Counsel, Arkansas-Oklahoma District, Oklahoma City

subject: [redacted]
Consent to Extend the Time to Assess Tax (Form 872)
Taxable Year [redacted]

DISCLOSURE STATEMENT

This advice constitutes return information subject to I.R.C. § 6103. This advice contains confidential information subject to attorney-client and deliberative process privileges and if prepared in contemplation of litigation, subject to the attorney work product privilege. Accordingly, the Examination or Appeals recipient of this document may provide it only to those persons whose official tax administration duties with respect to this case require such disclosure. In no event may this document be provided to Examination, Appeals, or other persons beyond those specifically indicated in this statement. This advice may not be disclosed to taxpayers or their representatives.

This advice is not binding on Examination or Appeals and is not a final case determination. Such advice is advisory and does not resolve Service position on an issue or provide the basis for closing a case. The determination of the Service in the case is to be made through the exercise of the independent judgment of the office with jurisdiction over the case.

DISCUSSION

Pursuant to CCDM (35)3(19)4(4), we transmitted our August 27, 1999 memorandum, concerning the Form 872, to the National Office for review. While our advice in the original memorandum is substantively correct, we suggest the following two minor variances:

1. The caption in the "Corporate Name" field of the Form 872 should read, "[redacted] (formerly [redacted]*"

   Then, on the bottom next to a corresponding asterisk state: "This is with respect to the consolidated tax liability of the [redacted] group."

2. On the second page (the signature page of Form 872), all that is needed is "[redacted] (formerly [redacted]" with a signature of a current officer of that corporation.

If you have any questions, please feel free to call Brian Smith at (405) 297-4802.

MICHAEL J. O'BRIEN
District Counsel

cc: ARC(TL)
ARC(LC)

Office of Chief Co[illegible]sel
Internal Revenue Service

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The advisory is subject to the review procedures of CCDM (35)3(19)4(4). The CCDM procedures require us to transmit a copy of the memorandum to the National Office. The National Office has ten days from receipt of our memorandum to respond. The National Office may extend the review period if necessary. We will keep you informed of any delays.

DISCUSSION

We are responding to your undated memorandum that we received on July 27, 1999. There, you had asked us to consider which corporation may validly consent to extend the assessment statute for a consolidated return group. Specifically, you requested our views on which corporation may sign the consent for the taxable year [redacted] following a reorganization of the consolidated return group.

Facts

Prior to a [redacted] reorganization, [redacted] was the common parent of the consolidated return group [redacted]. Beginning in [redacted] of [redacted], the consolidated return group reorganized its corporate structure.

The reorganization began on [redacted], when the group formed [redacted] new subsidiary corporations. First, the parent created and held [redacted] percent of [redacted]. [redacted] then created and fully owned the second corporation, [redacted] created the [redacted] new corporation, [redacted], as its wholly-owned subsidiary.

On [redacted], the group continued its reorganization when [redacted] merged into [redacted]. [redacted] survived this merger and [redacted] disappeared. Then, also on [redacted], [redacted] changed its name to [redacted]. Finally, [redacted] changed its name to [redacted].

As a result of this reorganization in [redacted] and [redacted] of [redacted], the new [redacted] (formerly [redacted]) became the consolidated parent for the [redacted] consolidated return group. The new [redacted] owns [redacted] percent of [redacted], which owns [redacted] percent of [redacted] (formerly [redacted] and the former common parent).

The consolidated return group filed its [redacted] U.S. Corporation Tax Return under the name [redacted] with the EIN [redacted]. The government would like to extend the time in which it may assess tax against the consolidated return group for the taxable year [redacted]. No corporate identity changes have taken place since [redacted].

Analysis

Treas. Reg. § 1.1502-77(c) provides that an agreement to extend the time within which the government can assess tax against a consolidated return group can be made by the parent of that group during the applicable year. In this instance, the consolidated return group had two common parents during [redacted]. Before the [redacted] reorganization, the company now known as [redacted] was the common parent of the consolidated return group [redacted]. After the [redacted] reorganization, the company formerly known as [redacted] and now named [redacted] became the common parent.

Treas. Reg. § 1.1502-77(c) does not specify which of the two common parents should be used where there are two common parents during the applicable year and both companies still exist. However, Temp. Treas. Reg. §§ 1.1502-77T(3) and (4)(i) provide that, with regard to waivers of statute of limitations, a common parent for all or any part of the year to which the waiver applies, may render a valid waiver for the group. Therefore, either [redacted] or [redacted] can give a valid consent for the group. Since the new [redacted] and formerly [redacted]) was the common parent at the time the group filed its [redacted] tax return, and since it is still the common parent, it is preferable to obtain the consolidated return group's consent from the new [redacted].[1]

We suggest using the following language in the "name" field on the front of the Form 872:

[redacted]
(EIN: [redacted]).

Since the person signing the consent form will be acting as an officer of an agent of the consolidated return group, we suggest the following language appear on the back of the form, in the "Corporate Name" field, just above the signature spaces:

[redacted] (EIN [redacted]), parent for the consolidated group [redacted].

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[1] We do point out that Temp. Treas. Reg. § 1.1502-77T [redacted] will call for a different signature if a tax period prior to [redacted] was involved.

An authorized officer of the new [redacted] should sign the waiver and indicate the company for which he is signing. For example, the "title" field might indicate that he is "President, [redacted]."

If you have any questions, please feel free to call Brian Smith at (405) 297-4802.

Michael J. O'Brien

MICHAEL J. O'BRIEN
District Counsel

cc: ARC(TL), MSR
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