Office of Chief Counsel
Internal Revenue Service

memorandum

CC:SER:GCD:NO:TL-N-689-99
SSCanavello

date: February 8, 1999

to: Chief, Examination Division, Gulf Coast District
Attention: Revenue Officer Evelyn Young, Baton Rouge POD

from: District Counsel, Gulf Coast District, New Orleans

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subject: [redacted]
Tax Year Ended March 31, [redacted]
Proper Party to Sign Consent to Extend Limitations Period

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.

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ISSUE

Who is the proper party to sign a consent extending the statute of limitations for assessment for [redacted] for the tax year ended March 31, [redacted]?

FACTS

The taxpayer for whom the limitations period is to be extended is [redacted] for the tax period ended March 31, [redacted]. The statute of limitations will expire on [redacted].

The facts provided by Revenue Agent Evelyn Young by telephone and in the Proxy Statement dated [redacted] are as follows:

By Plan of Merger dated [redacted], [redacted] became a wholly owned subsidiary of [redacted]. [redacted], a wholly owned subsidiary of [redacted] formed for the purpose of the merger, was merged into [redacted].

Concurrently with the merger, [redacted] changed its name to [redacted], a name under which it had been doing business for some time prior to the merger. [redacted] continues to use the same EIN that was formerly used by [redacted].

Treas. Reg. § 1.1502-77T applies to statutory notices and waivers of the statute of limitations for taxable years for which the due date (without extension) of the consolidated return is after September 7, 1988. It provides for alternative agents if the corporation that is the common parent of the group ceases to be the common parent, whether or not the group remains in existence under § 1.1502-75(d).

Under the regulation, the common parent of the group for all or part of the year to which the waiver applies may give a waiver of the statute of limitations as the deemed agent of the group. Treas. Reg. § 1.1502-77T(a)(4)(i). Since [redacted] was the common parent for the tax year ended March 31, [redacted], and it is still in existence, it can act as an agent for the group for the tax year ended March 31, [redacted].

We recommend that you use the following language in the consent:

[redacted] (EIN [redacted]),
formerly known as [redacted] *

*with regard to the consolidated tax liability of the [redacted] (EIN [redacted] consolidated group for fiscal tax year ended March 31, [redacted].

Another, more complicated alternative would be to have [redacted] sign the consent as agent for [redacted]. This would only be possible if the acquisition of [redacted] was a reverse acquisition. The facts provided thus far are not sufficient to make this determination with absolute certainty. We therefore recommend that you have [redacted] sign the consent, using the language set forth above.

The EIN which should be written in the upper right hand corner is that of [redacted] (and formerly that of [redacted]).

This advice has been discussed with and reviewed by our National Office. If you have further questions, please call me at (504) 558-3114.

SUSAN SMITH CANAVELLO
Senior Attorney