Office of Chief Counsel
Internal Revenue Service

memorandum

CC:NER:OHI:CIN:TL-N-4486-99
JEBudde

date: JUL 21 1999

to: Examination Division, E:EB4:1438
Ohio District
Attn: John Lawrence

from: District Counsel, Ohio District

subject: [redacted]
Consent to Extend Statute - [redacted]

We have reviewed your request for advice concerning the above-referenced consent. As we understand the facts, you currently have under examination the Form 1120 for [redacted], and its consolidated subsidiaries for the year ended [redacted]. The statute of limitations for that year expires in [redacted]. The examination is not complete, and the revenue agent wants to obtain the consent identified above.

During [redacted], [redacted], was the parent corporation for a group of corporations. [redacted] and its subsidiaries filed a consolidated tax return for [redacted]. In [redacted], [redacted], [redacted] and an unrelated corporation, [redacted], merged. The merger was accomplished by having a [redacted] subsidiary merge into [redacted] in a transaction identified as a § 368(a) transaction. After the merger, the [redacted] subsidiary ceased to exist, leaving [redacted] as a wholly owned subsidiary of [redacted]. Ultimately, [redacted] shareholders received shares of [redacted] stock in exchange for their [redacted] stock. You indicate that [redacted] remains in existence and continues to use its old EIN. [redacted], which now calls itself [redacted], has filed consolidated tax returns with [redacted] subsequent to the [redacted] merger.

You have already obtained a Form 872 for "[redacted]" which was signed by "[redacted], Vice President Tax, [redacted]." You advised this office that [redacted] is currently an officer of [redacted]. You requested our opinion whether you should obtain another Form 872 in the name of [redacted], to extend the [redacted] statute of [redacted]. We do not recommend that you obtain any additional consents because you have already obtained the appropriate consent.

Section 1501 of the Internal Revenue Code grants affiliated groups of corporations the privilege of filing returns on a consolidated basis. If consolidated returns are filed, the common parent of the consolidated group is the sole agent for the members of the group with respect to the consolidated tax liability of the group. The common parent is the highest-tier domestic corporation in the group. In [redacted]'s situation, the old common parent, [redacted], remains in existence, but the group continues with a new common parent, [redacted].

Treas. Reg. § 1.1502-77T provides that the common parent "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 year." **The common parent remains the agent for the members of the group for any years during which it was the common parent, whether or not consolidated returns are filed in subsequent years 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(a). Thus, the common parent remains the proper party to extend the limitations period and receive notices of deficiency for any taxable year during which it was the common parent, as long as it remains in existence.

In accordance with the foregoing, we believe you have already obtained the necessary consent to extend the [redacted] statute for [redacted]. Obviously, the consent you obtained will not extend the statute for [redacted] for [redacted].

<u>If our statement of the facts is incorrect, you should contact this office immediately.</u> If you have any questions about the foregoing, please contact John E. Budde at 513-684-3211.

Sincerely,

JOHN A FREEMAN
Assistant District Counsel

(signed) JOHN E. BUDDE

By: _____
JOHN E. BUDDE
Senior Attorney