Office of Chief Counsel
Internal Revenue Service

memorandum

TL-N-2535-00
JForsberg

date: June 16, 2000

to: Chief, Examination Division, North Central District
Attn: Mark Johnson, Group 1220 (Bloomington)

from: District Counsel, North Central District, St. Paul

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ubject: [redacted]
Form 872

Our advice has been requested as to the proper party to execute, and the proper form for, a Form 872 for the [redacted] consolidated group's taxable year ending [redacted]. For the reasons discussed, we believe that the Form 872 should executed on behalf of the [redacted] group by [redacted] (EIN: [redacted] in the manner set forth below.

FACTS

[redacted] (EIN: [redacted] ("Old [redacted]") is a Delaware corporation with a taxable year ending [redacted]. Old [redacted] filed consolidated returns as the common parent of a consolidated group (the "[redacted] group") for the taxable years [redacted] through [redacted]. Old [redacted] changed its name from "[redacted] to "[redacted]" during the year [redacted], and from "[redacted]" to "[redacted]" during the taxable year [redacted]. [redacted] (EIN: [redacted] ("New [redacted]") is a Delaware corporation which was incorporated in [redacted] under the name [redacted]. New [redacted] was a wholly-owned subsidiary of Old [redacted]. [redacted] was a Delaware corporation and a wholly-owned subsidiary of New [redacted].

On or about [redacted], [redacted] merged with and into Old [redacted]. Each share of common stock and Series C preferred stock of Old [redacted] was converted into one share of common stock and Series C. preferred stock, respectively, of New [redacted] with the same rights and privileges as such shares of Old [redacted]. As a result, Old [redacted] became a wholly-owned subsidiary of New [redacted], and New [redacted] became the parent of the [redacted]. New [redacted] is now a publicly-traded holding company.

DISCUSSION

Treas. Reg. § 1.1502-77(a) provides generally that the common parent of a consolidated group is the sole agent for each subsidiary in the group for any consolidated return year. Expressly included in the authority of the common parent is the power to execute waivers. Treas. Reg. § 1.1502-77(a) further provides that its provisions 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. § 1.1502-77T provides for alternative agents where a corporation that is the common parent of a group ceases to be the common parent. Under Treas. Reg. § 1.1502-77T(a)(3) & (4), a waiver of the statute of limitations given with respect to the group will be deemed to be given by the agent for the group if it is given by any of the following:

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

(ii) A successor to the former common parent in a transaction to which section 381(a) applies,

(iii) The agent designated by the group under § 1.1502-77(d), or

(iv) If the group remains in existence under § 1.1502-75(d)(2) or (3), the common parent of the group at the time the notice is mailed or the waiver given.

In the present case, the corporate existence of Old [redacted] continues unabated, albeit under a new name and as a subsidiary of New [redacted]. Accordingly, Old [redacted] continues as agent for the [redacted]'s pre-merger years. Thus, Old [redacted] can continue to execute waivers for the [redacted]'s pre-merger taxable years (including [redacted]).

In preparing the Form 872, we suggest that:

1. The taxpayer's name read:

[redacted] (EIN: [redacted]
[redacted], formerly [redacted] (EIN:
[redacted] *

The following footnote should be put at the bottom of the page:

* This is with respect to the consolidated income tax liability of the [redacted] (EIN [redacted] consolidated group for the taxable year ended [redacted].

2 The EIN of Old [redacted] should be used as the taxpayer's EIN.

3. The signature block should use name "[redacted], formerly [redacted]" and should be executed by a current officer of [redacted].

If you have any questions respecting this matter, please call Jack Forsberg at 290-3473, ext. 227.

REID M. HUEY
District Counsel

By: Jack Forsberg
JACK FORSBERG
Special Litigation Assistant

cc: Assistant Chief Counsel
(Field Service)