Office of Chief Counsel
Internal Revenue Service

memorandum

CC:WR:SCA:SD:TL-N-111-99
GAKindel

date: JAN 14 1999

to: Appeals Office, Southern California District
ATTN: Marcia Hamm, Team Manager, Laguna Niguel

from: Associate District Counsel, Southern California District, San Diego

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subject: **Consent to Extend the Time to Assess Tax, Form 872**

[redacted]

This memorandum responds to your request for advice on the proper party to execute Consent to Extend the Time to Assess Tax, Form 872, on behalf of [redacted] and [redacted].

DISCLOSURE LIMITATIONS

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.

ISSUE

Who is the proper party to execute a Consent to Extend the Time to Assess Tax, Form 872, to further extend the time for assessing income taxes due from the following entities for the tax periods ending [redacted], [redacted] and [redacted]

a. [redacted]
b. [redacted]
c. [redacted]

CONCLUSION

Any officer, such as its president, vice-president, treasurer, assistant treasurer, chief accounting officer or any other officer duly authorized to act, can execute Form 872 on behalf of [redacted], [redacted] and [redacted].

FACTS

[redacted] is a Delaware corporation wholly-owned by [redacted] a [redacted] corporation. [redacted] has several wholly-owned subsidiaries, including [redacted], and [redacted]

[redacted], [redacted], [redacted] and [redacted] filed separate federal income tax returns for the taxable years ending [redacted], [redacted] and [redacted].

[redacted], [redacted], [redacted] and [redacted] filed a consolidated federal income tax return for the taxable year ending [redacted]

The Service is currently auditing [redacted], [redacted] and [redacted] for the taxable years [redacted], [redacted], and [redacted]. The Service recently sought to extend the period of limitations for these years to [redacted], and mailed a Consent to Extend the Time to Assess Tax, Form 872, to each of [redacted], [redacted] and [redacted].

In response, however, the Service received three Forms 872, each executed by [redacted], vice-president of [redacted]. [redacted] is not an officer of either [redacted], [redacted], [redacted] or [redacted].

The Service is not aware of any corporate resolution or other corporate designation by [redacted], [redacted], [redacted], or [redacted] authorizing [redacted] to execute consents to extend the period of limitations on their behalf.

DISCUSSION

I.R.C. § 6501(a) provides that, as a general rule, tax must be assessed within three years of the filing date of the return. I.R.C. § 6501(c)(4), however, allows the Service and the taxpayer to agree in writing to extend the three-year period of limitations. Any officer duly authorized to act on behalf of a corporation can execute Form 872 to extend the three-year period of limitations.

The common parent of a consolidated group of corporations is the sole agent for each subsidiary in the consolidated group and is duly authorized to act in its own name in all matters relating to the income tax liability of the consolidated group for the consolidated return year. Treas. Reg. § 1.1502-77(a). As such, the common parent, in its own name, is the proper party to extend the period of limitations on behalf of itself and each subsidiary in the consolidated group with respect to a consolidated return year. Id. (emphasis added).

Although [redacted] now files a consolidated return with [redacted], [redacted] and [redacted], it did not file such returns for [redacted] through [redacted] As a consequence, [redacted] is not authorized to execute an extension of the period of limitations on behalf of either [redacted], [redacted] or [redacted] for [redacted], [redacted] or [redacted] Because the Service has time remaining on the period of limitations, we recommend that the Service obtain consents for [redacted], [redacted] and [redacted], which are executed by the officers authorized to act on their behalf.

If you have any questions, please call the undersigned at (619) 557-6014.

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By: /S/
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