Office of Chief Counsel
Internal Revenue Service

memorandum

CC:NER:TL-N-7213-99
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date:

to: Chief, Examination Division, Manhattan
Attention: Charles E. Shepard, Case Manager

from: District Counsel, Manhattan

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subject: [redacted]
EIN: [redacted]

Taxable Years Ended: [redacted]

Statute of Limitations Expires: [redacted]

Uniform Issue List # 6501.08-00; 1502.77-01

We have been asked for advice concerning how the parties can properly extend the statute of limitations on assessment for the [redacted] taxable year of a subsidiary of the above listed taxpayer. Our advice relies on facts presented by Pamela Garrison, a Revenue Agent working on the examination team. The advice rendered in this memorandum is conditioned on the accuracy of the facts provided to us.

Issue:

What specific language, if any, should be used on the consent to extend the statute of limitations on assessment for [redacted] for the tax year [redacted].

Facts:

In [redacted], [redacted], a Delaware corporation, filed a tax return as parent of a consolidated group called [redacted]. In [redacted], [redacted] purchased [redacted] shares of common stock issued by [redacted] resulting in [redacted] owning approximately [redacted]% of [redacted].

On [redacted], [redacted] converted [redacted] shares of preferred stock of [redacted] into [redacted] shares of [redacted] common

stock, bringing [redacted]'s ownership interest in [redacted] to [redacted]%. Thus, [redacted]'s consolidated tax return for [redacted] included [redacted] as part of the [redacted] consolidated group. [redacted]'s [redacted] consolidated tax return also includes [redacted] as part of its consolidated group.

On [redacted] purchased [redacted]% of [redacted]'s stock. After the acquisition, [redacted]'s name was changed to [redacted] with the same EIN.

Discussion:

In general, the statute of limitations on assessment expires three years from the date a taxpayer files a tax return for such tax year. I.R.C. §6501(a). Section 6501(c)(4), however, provides an exception to the general three year statute of limitations on assessment. In accordance with this exception, the Secretary and the taxpayer may consent in writing to an agreement to extend the statute of limitations prior to the expiration of the statute of limitations period. The Service created Form 872 ("Consent to Extend the Time to Assess Tax") for this purpose.

In the case of a consolidated group, guidance as to the appropriate entity to enter into a consent to extend the statute of limitations on assessment can be found in the consolidated return regulations. Treas. Regs. §1.1502-1 et seq. Pursuant to the consolidated return regulations, the common parent is the sole agent for each member of the group, duly authorized to act in its own name in all matters relating to the income tax liability for the consolidated return year. Treas. Reg. §1.1502-77(a). The common parent in its name will give waivers, and any waiver so given shall be considered as having been given or executed by each such subsidiary. Treas. Reg. §1.1502-77(a). Unless there is an agreement to the contrary, an agreement entered into by the common parent extending the time within which an assessment of income tax may be made for the consolidated return year shall be applicable to each corporation which was a member of the group during any part of such taxable year. Treas. Reg. §1.1502-77(c).

The common parent remains the agent for the members of the group for any year 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. See Treas. Reg. § 1.1502-

77(a); Southern Pacific v. Commissioner, 84 T.C. 395, 401 (1985). Accordingly, as a general rule, the common parent remains the proper party to extend the statute of limitations for any taxable year for which it was the common parent, as long as it remains in existence.

Since [redacted] continues to exist even though it is now owned by [redacted], it is a proper party to name on the Form 872. However, [redacted]'s new name, [redacted], must be used on the Form 872. We recommend that the name of the taxpayer that should appear on the Form 872 is as follows:

[redacted] [EIN: [redacted], formerly known as, [redacted] [EIN: [redacted]]

In the case of a corporate return, section 6062 provides that a corporation's income tax returns must be signed by the president, vice-president, treasurer, assistant treasurer, chief accounting officer or any other officer duly authorized to act. Since the rules applicable to the execution of an original return also apply to a consent to extend the statute of limitations, any such consent may be signed by the above-noted individuals. Rev. Rul. 83-41, 1983-1 C.B. 349, clarified and amplified, Rev. Rul. 84-165, 1984-2 C.B. In the subject case, any current officer of [redacted] of the type set forth in section 6062 may sign the consent.

In addition to the recommendations made herein, we further recommend that you pay strict attention to the rules set forth in the IRM. Specifically, IRM 4541.1(2) requires use of Letter 907(DO) to solicit the Form 872, and IRM 4541.1(8) requires use of Letter 929(DO) to return the signed Form 872 to the taxpayer. Dated copies of both letters should be retained in the case file as directed. When the signed Form 872 is received from the taxpayer the responsible manager should promptly sign and date it in accordance with Treas. Reg. § 301.6501(c)-1(d) and IRM 4541.5(2). The manager must also update the statute of limitations in the continuous case management statute control file and properly annotate Form 895 or equivalent. See IRM 4531.2 and 4534. This includes Form 5348. In the event a Form 872 becomes separated from the file or lost, these other documents would become invaluable to establish the agreement.

Please note that Section 3461 of the Restructuring and Reform Act of 1998, codified in Section 6501(c)(4)(B), requires IRS to advise taxpayers of their right to refuse to extend the statute of limitations on assessment, or in the alternative to limit an extension to particular issues or for specific periods

of time, each time that the Service requests that the taxpayer extend the limitations period. To satisfy this requirement, you may provide Pub. 1035, "Extending the Tax Assessment Period," to the taxpayer when you solicit the Form 872. Alternatively, you may advise the taxpayer orally or in some other written form of the I.R.C. § 6501(c)(4)(B) requirement. In any event, you should document your actions in this regard in the case file.

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