Office of Chief Counsel
Internal Revenue Service

memorandum

CC:LM:MCT:CLE:PIT:POSTF-104845-02
DPLeone

date: February 14, 2002

to: [redacted] LMSB: [redacted]
[redacted]

from: Assoc. Area Counsel (CC:LM:MCT:CLE:PIT)

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subject: [redacted] - **Consents**
Tax Years Ended: [redacted] **and** [redacted]

This is in response to your January 22, 2002 request for advice with respect to extensions of the statute of limitations for the tax years ended [redacted] and [redacted] This memorandum should not be cited as precedent. This memorandum is subject to 10-day post review by our National Office and, therefore, is subject to modification. We recommend that you contact our office on the first business day more than 10 days after the date on this memorandum to see if there are any suggested modifications.

ISSUES

1. After the reverse acquisition on [redacted], what is the proper name to be used on the Form 872, Consent to Extend the Time to Assess Tax, for the consolidated income tax return filed by [redacted], Inc. (EIN [redacted]) and Subsidiaries for the tax year ended [redacted]?

2. Who should sign the Form 872 for the tax year ended [redacted]?

3. What is the proper name to be used on the Form 872, Consent to Extend the Time to Assess Tax, for the consolidated income tax return filed by [redacted], Inc. (EIN [redacted]), formerly [redacted], Inc., and Subsidiaries filed for the tax year ended [redacted]?

4. Who should sign the Form 872 for the tax year ended [redacted]?

ANSWERS

1. The proper name to use on the Form 872 for the tax year ended [redacted] is as follows:

[redacted], Inc. (EIN [redacted]), formerly known as [redacted], Inc., and Subsidiaries*

* This is with respect to the consolidated federal income tax of [redacted] Inc. (EIN [redacted]) and Subsidiaries consolidated group for the tax year ending [redacted].

2. The consent should be signed by an individual authorized to act for [redacted], Inc. (EIN [redacted]), formerly known as [redacted], Inc. Generally, the president, vice-president, treasurer, assistant treasurer, chief accounting officer or any other officer duly authorized to act may sign the consent. Rev. Rul. 84-165, 1984-2 CB 305.

3. The proper name to use on the Form 872 for the tax year ended [redacted] is as follows:

[redacted], Inc. (EIN [redacted]), formerly known as [redacted], Inc., and Subsidiaries*

* This is with respect to the consolidated federal income tax of [redacted], Inc. (EIN [redacted]), formerly known as [redacted], Inc., and Subsidiaries consolidated group for the tax year ending [redacted].

4. Same answer as # 2 above.

FACTS

[redacted][1], Inc ("[redacted]") (EIN [redacted]), a Delaware corporation, was incorporated on [redacted].

A Plan of Reorganization and Merger Agreement, effective [redacted], was entered among [redacted], [redacted]

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[1] Please note that, although there has been a name change, we will refer to this entity (EIN [redacted]) throughout our discussion simply as "[redacted]".

[redacted]. (a Delaware corporation and a wholly-owned subsidiary of [redacted]), [redacted], Inc. ("[redacted]") (a Delaware corporation), and [redacted] LLC. It is our understanding that the closing on this merger actually took place on [redacted].

Pursuant to the stated merger plan:

1) [redacted] changed its name to [redacted], Inc.

2) [redacted] merged with and into [redacted] Corp., with [redacted] surviving, under Delaware state law. [redacted]'s name was changed to [redacted] Stores Company, and it became a wholly owned subsidiary of [redacted].

At the effective time of the merger, all outstanding shares of [redacted] held by [redacted] shareholders (except for the approximately [redacted]% of [redacted] shares held by [redacted], which shares were cancelled) were automatically converted into the right to receive an identical number of [redacted] common stock. Additionally, the shares of [redacted] were converted into an equal number of shares of [redacted] common stock. In essence, after the merger, [redacted] held all of the outstanding stock of [redacted], the surviving corporation in the merger with and into [redacted], while the former [redacted] shareholders had a right to receive [redacted] stock.

On the date of the merger agreement, [redacted] was authorized to issue [redacted] shares of common stock and [redacted] shares of preferred stock, and had issued and outstanding [redacted] shares of common stock and no shares of preferred stock. Prior to the merger, [redacted] declared a stock dividend (stock split) so that, as of the effective time of the merger, the [redacted] shareholders of record immediately prior to the merger would hold [redacted] shares of [redacted].

On the date of the merger agreement, [redacted] was authorized to issue [redacted] shares, of which [redacted] were issued and outstanding, as well as an additional [redacted] shares being subject to outstanding stock options granted under [redacted]'s [redacted] stock option plan.

[redacted] indicates that it exchanged [redacted] shares of [redacted] stock for all of the [redacted] stock not held by [redacted] prior to the reorganization. No liabilities were assumed by [redacted] as a result of the exchange and the property acquired by [redacted] was not subject to any liabilities.

Since the outstanding [redacted] stock held by shareholders of record immediately prior to the acquisition was only [redacted] (pursuant to the stock split) prior to the merger, and [redacted] shares of [redacted] stock were issued in exchange for the [redacted] stock and are now held by the former [redacted] shareholders, this is a reverse acquisition because the shareholders of the acquired corporation, [redacted], now own more than [redacted] percent in value of the acquiring corporation, [redacted], as a result of the acquisition. Treas. Reg. § 1.1502-75(d)(3)

Due to the reverse acquisition, the former [redacted] consolidated group continues, while the former [redacted] group terminated. Additionally, [redacted] became the common parent of the surviving [redacted] consolidated group. Treas. Reg. § 1.1502-75(d)(3)(i).

Prior to entering into the merger transaction, the parties received a private letter ruling. In the ruling, the formation of [redacted] and the merger of [redacted] and [redacted] were ignored for federal income tax purposes and instead the transaction was treated as an acquisition by [redacted] of all of the outstanding stock of [redacted] not already owned by it in exchange solely for shares in [redacted]. The merger was a reorganization under I.R.C. § 368(a)(1)(B).

[redacted] filed a consolidated income tax return for the tax year ended April 7, [redacted], with the following wholly owned subsidiaries: [redacted] Corp. and [redacted] Corp.

[redacted], Inc., formerly known as [redacted], as the new common parent of the continuing [redacted] group, filed a consolidated income tax return for the tax year ended July 31, [redacted], with the following wholly owned subsidiaries: [redacted] Company; [redacted] Company; [redacted] Company; [redacted].; [redacted] Ltd. [redacted] Co.; and [redacted] Corp.

DISCUSSION

[redacted] was the common parent for the consolidated group for the year ended [redacted]. Under the consolidated return regulations, the common parent of a consolidated group is the sole agent for each subsidiary in the group. Treas. Reg. § 1.1502-77(a). Thus, [redacted], as the common parent, is the proper party to sign consents, including the Form 872 waiver to extend the period of limitations, for all members in the group. Treas. Reg. § 1.1502-77(a). The fact that the tax year ended and the group terminated on the reverse acquisition date does not

extinguish [redacted]'s authority as common parent for the old group to extend the statute of limitations for that final income tax period.

As to the income tax return for the tax year ended July 31, [redacted], filed by the consolidated group which continued after the reverse acquisition, [redacted], which is the now the highest tiered domestic corporation of the continuing [redacted] consolidated group, is the new common parent and is the agent for the members of the [redacted] consolidated group for taxable years ending after the reverse acquisition. Treas. Reg. § 1.1502-75(d)(3)(i). As such, [redacted] has the authority to sign the consent.

Finally, since it is still a relatively new provision, we would like to remind the agent of the requirements under I.R.C. 6501(c)(4)(B). Section 6501(c)(4)(B) provides that the Service shall notify the taxpayer of the following rights: 1) to refuse to extend the period of limitations; 2) to limit such extension to particular issues; and 3) to limit the extension to a particular period of time. This notice must be provided <u>each</u> time an extension is requested. Accordingly, please remember to advise the taxpayer, or its representative, of the section 6501(c)(4)(B) rights either orally (with contemporaneous documentation to the file) or in writing or by providing a copy of Publication 1035, <u>Extending the Tax Assessment Period.</u>

This writing may contain privileged information. Any unauthorized disclosure of this writing may have an adverse effect on privileges, such as the attorney client privilege. If disclosure becomes necessary, please contact this office for our views.

If you have any questions, please call Donna P. Leone at 412-644-3442.

RICHARD S. BLOOM
Associate Area Counsel
(Large and Mid-Size Business)

By:_____
DONNA P. LEONE
Senior Attorney (LMSB)