Office of Chief Counsel
Internal Revenue Service

memorandum

CC:LM:F:BOS:POSTF-101805-02
BJLaterman

date: 2/26/02

to: Group 1128, Territory 1120
Financial Services: LMSB:K.Benner

from: Associate Area Counsel, Boston
CC:LMSB:FS:Boston

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in re: [redacted] **[now known as [redacted], Inc.]**
Forms 872
Taxable Years [redacted] through [redacted]

This is in response to your request dated January 9, 2002, that we give advice regarding extending the statute of limitations for the above-mentioned consolidated group's [redacted] through [redacted] taxable years. This memorandum should not be cited as precedent.

[redacted] (EIN [redacted]), a Delaware Corporation, was the parent corporation of an affiliated group of corporations which filed consolidated federal income tax returns for the taxable years [redacted] through [redacted]. [redacted] plc is a public limited company incorporated in [redacted] and [redacted]. [redacted]. is a Delaware corporation and a wholly owned subsidiary of [redacted] plc. On [redacted], [redacted], [redacted] plc and [redacted] entered into an Agreement and Plan of Merger which provided that [redacted] plc would acquire all the outstanding stock of [redacted] pursuant to the merger of [redacted]. with and into [redacted]. The Agreement and Plan of Merger further provided that [redacted] shall be the surviving corporation in the merger and shall continue its separate corporate existence retaining EIN [redacted]. On [redacted], [redacted], the certificate of Ownership and Merger which merges OM [redacted]. into [redacted] was received and filed in the Office of the Secretary of the State of Delaware.

On or about [redacted], [redacted] changed its name to [redacted], Inc. You are seeking to extend the statute for the consolidated returns

filed by [redacted] and Subsidiaries for the taxable years [redacted] through [redacted].

Generally, the common parent, with certain exceptions not applicable here, is the sole agent for each member of the group, duly authorized to act in its own name in all matters related to the 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 also been given or executed by each subsidiary. Treas. Reg. § 1.1502-77(a). Thus, generally 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). Furthermore, the provisions of Treas. Reg. § 1.1502-77(a) 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. § 1.1502-77(c) provides that, unless the District Director agrees to the contrary, an agreement entered into by the common parent extending the time within which an assessment may be made in respect to the tax for a consolidated return year, shall be applicable to each corporation which was a member of the group during any part of such taxable year. The common parent and each subsidiary, which was a member of the consolidated group during any part of the consolidated return year, is severally liable for the tax for such year. Treas. Reg. § 1.1502-6(a).

In this case, the common parent, [redacted], now known as [redacted], Inc., is still in existence and, therefore, it is still the agent for the consolidated group(in existence in [redacted] through [redacted]) under the provisions of Treas. Reg. § 1.1502-77(a). The caption on the Form 872 should be: [redacted], Inc.(EIN)formerly known as [redacted](EIN)and Subsidiaries.* At the bottom of the page you should add: * [redacted], Inc. formerly known as [redacted] has executed the Form 872 as agent for the [redacted] and Subsidiaries consolidated group for its [redacted], [redacted] and [redacted] taxable years. Therefore, based on the facts[1] provided we conclude that a Form 872 executed by a current

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[1] We note that our advice is based on our understanding that [redacted] formerly known as [redacted] from whom you will solicit the extension is the same corporation that was the common parent for [redacted] through [redacted]. You have confirmed that the EIN is the same as that set forth on the returns for [redacted] through [redacted].

officer of [redacted] Inc., the still existing parent of the group for the [redacted] through [redacted] taxable years, will extend the period for assessment of tax for said taxable years.

As a final matter, we recommend that you pay strict attention to the rules set forth in the Internal Revenue Manual(IRM). Specifically, IRM 121.2.22.3 requires use of Letter 907 (DO) to solicit the Form 872, and IRM 121.2.22.4.2 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 authorized manager should promptly sign and date it in accordance with Treas.Reg.§301.6501(c)-1(d) and IRM 121.2.22.3. 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.

Furthermore, please note that §3461 of the Restructuring and Reform Act of 1998, codified in I.R.C.§6501(c)(4)(B),requires the Internal Revenue Service to advise taxpayers of their right to refuse to extend the limitations on assessment, or in the alternative to limit an extension to particular issues or for specific periods of time, each time that the Internal Revenue Service requests that the taxpayer extend the limitations period. To satisfy the requirement, Publication 1035,"Extending the Tax Assessment Period," must be given when you solicit the statute extension.

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

If we can be of any further assistance, the undersigned can be reached at (617) 565-7855.

BARRY J. LATERMAN
Special Litigation Assistant