Office of Chief Counsel
Internal Revenue Service

memorandum

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date: JUN 19 2002

to: Examination Division (LMSB:RFP:1585 (Santa Ana POD))
Attention: Donald W. Alvarado, Team Leader
Joseph P. Rayburn, Team Coordinator

from: June Y. Bass, Associate Area Counsel (LMSB)
Joyce M. Marr, Attorney (LMSB)

subject: **Taxpayer: [redacted], Inc. and Subsidiaries**
Issue: Review of Form 872
Years: [redacted], [redacted] and [redacted]
First Statute of Limitations to Expire: [redacted]

DISCLOSURE STATEMENT

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.

This memorandum responds to your request made on April 24, 2002, that we review the language of a draft Form 872, Consent To Extend The Time To Assess Tax, for the tax years [redacted], [redacted] and [redacted], attached to your request and affixed hereto as Exhibit A. Subsequently, you also requested that we provide guidance on the preparation of a Form 872 for [redacted], Inc.'s tax year ended [redacted]. *This memorandum should not be cited as precedent.*

CONCLUSIONS

Draft Form 872 for [redacted] consolidated group

We recommend that you make the following changes to the draft Form 872:

1. Change the "Names(s)" in the caption to read: [redacted], Inc. (EIN: [redacted]) and Subsidiaries consolidated group. After the name of the

consolidated group, place two asterisks. Then, at the bottom the Form, add the following: "**This is with respect to the [redacted], Inc. and Subsidiaries consolidated group for the taxable years [redacted], [redacted], and [redacted]."

2. Change the Corporate Name in the signature block to read: "[redacted] Inc."

The signature block should be signed by a current officer of [redacted] and the signature block should include the officer's name typed or printed and the officer's official title.

Additionally, since the requirements of I.R.C. § 6501(c)(4)(B), pertaining to giving the taxpayer notification of certain rights, must be satisfied, please ensure that the statute extension is requested by the most recent revision of Form Letter 907 or 976.

Form 872 to be secured for [redacted]

The Form 872 to be secured for [redacted]'s short period ended [redacted], should be captioned in the name "[redacted] Inc." and the signature block should be executed by a current officer of [redacted]. The signature block should include the corporate name, the signing officer's name typed or printed, and the officer's official title. Additionally, since the requirements of I.R.C. § 6501(c)(4)(B), pertaining to giving the taxpayer notification of certain rights, must be satisfied, please ensure that the statute extension is requested by the most recent revision of Form Letter 907 or 976.

FACTS[1]

The tax years [redacted] through [redacted], inclusive, of [redacted] (the Taxpayer) and Subsidiaries, a consolidated group, are currently under audit. The Taxpayer has indicated that it is agreeable to extending the statute of limitations on assessment for these tax years of the consolidated group to [redacted].

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[1] Our understanding of the facts of this case is limited to the information that you have provided in this case unless otherwise stated. We have not undertaken any independent investigation of the facts of this case. If the facts known to us are incorrect or incomplete in any material respect, you should not rely on this advice, but instead, should contact our office immediately.

The consolidated group's Federal income tax returns for the years [redacted], [redacted], and [redacted] were filed on [redacted], [redacted], and [redacted], respectively. With respect to the consolidated income tax returns filed by the Taxpayer for [redacted] and [redacted], the following Forms 872 have been secured by the Service:

Year	Date Executed For Taxpayer	Date Executed For The Service	Date to Which Statute Extended
[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]

The Taxpayer still exists and is still the common parent of the consolidated group.

[redacted], Inc. ([redacted]) (EIN: [redacted]) was acquired by the [redacted] consolidated group on [redacted],[2] and is still a subsidiary of the Taxpayer. [redacted] filed its final income tax return for its tax period ended [redacted], on [redacted]. Exam is auditing [redacted] final tax return. A Form 872 was secured by the Service in [redacted] to extend the statute of limitations until December 31, [redacted], for [redacted]'s tax year ended [redacted]. A copy of that Form 872 is affixed hereto as Exhibit B.

DISCUSSION

Form 872 for [redacted] consolidated group

Generally, the common parent, with certain exceptions not applicable here, is the sole agent for each member of the group,

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[2] Although your telefax dated May 15, 2002, states that [redacted] was acquired by the [redacted] consolidated group on [redacted], information on LEXIS and the Florida Secretary of State website indicates that [redacted] became a member of the [redacted] consolidated group on [redacted], [redacted]. The correctness of the [redacted], date is supported by the fact that [redacted] filed a short period return for the period ended [redacted]. See Treas. Reg. § 1.1502-76(b)(1)(ii)(A)(1). If you find that [redacted] in fact became a member of the consolidated group on [redacted], please contact us immediately.

duly authorized to act in its own name in all matters relating 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 such 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).

Generally, the Service must make an assessment of tax within three years after a return is filed. I.R.C. § 6501(a). However, before the period for making an assessment expires, the Service and the taxpayer may consent in writing to extend the period for making an assessment. I.R.C. § 6501(c)(4).

We recommend that you Change the "Names(s)" in the caption of the draft Form 872 to read: [redacted], Inc. (EIN: [redacted]) and Subsidiaries consolidated group. After the name of the consolidated group, you should place two asterisks and, then, at the bottom the Form, add the following: "**This is with respect to the [redacted], Inc. and Subsidiaries consolidated group for the taxable years [redacted], [redacted], and [redacted]."

The Corporate Name in the signature block should be changed to read: "[redacted] Inc." The signature block should be signed by a current officer of the Taxpayer and the signature block should include the officer's name typed or printed and the officer's official title.

Additionally, since the requirements of I.R.C. § 6501(c)(4)(B), pertaining to giving the Taxpayer notification of certain rights, must be satisfied, please ensure that the statute extension is requested by the most recent revision of Form Letter 907 or 976.

Form 872 for [redacted]

In general, if a corporation becomes a member of a consolidated group during a consolidated return year, it becomes a member at the end of day on which it becomes a member, and its tax year ends for Federal income tax purposes at the end of that day. Treas. Reg. § 1.1502-76(b)(1)(ii)(A)(1). Thus, since [redacted] became a member of the [redacted] consolidated group on [redacted], it was required to file a return for its short period ended [redacted].

The Form 872 to be secured for [redacted] should be captioned in the name "[redacted] Inc." and the signature block should

be executed by a current officer of [redacted]. The signature block should include the corporate name, the signing officer's name typed or printed, and the officer's official title. Additionally, since the requirements of I.R.C. § 6501(c)(4)(B), pertaining to giving the taxpayer notification of certain rights, must be satisfied, please ensure that the statute extension is requested by the most recent revision of Form Letter 907 or 976.

This advice has been coordinated with the Office of Chief Counsel.

Please call Joyce M. Marr at (949)360-2688 if you have any questions.

Encl: Exhibit A: draft Form 872 for the Taxpayer's consolidated group
Exhibit B: Form 872 previously secured for [redacted]