Office of Chief Counsel
Internal Revenue Service

memorandum

CC:NER:NED:BOS:TL-N-367-00
PColleran

date: AUG 30 2000

to: Joseph Kennedy, Group Manager
Mark Silva, Revenue Agent

from: Assistant District Counsel, New England District, Boston

subject: [redacted]
Taxable years ended: [redacted], [redacted], [redacted], [redacted] and [redacted]
Consents to Extend the Period of Limitations
Earliest Expiration of Statute of Limitations: [redacted]

DISCLOSURE STATEMENT

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This refers to the memorandum from your office requesting guidance on extending the statute of limitations for assessment with respect to [redacted] for the taxable years ended [redacted], [redacted], [redacted], [redacted] and [redacted]. The facts are set forth below.

[redacted] federal income tax returns for the taxable years ended [redacted], [redacted], [redacted], [redacted] and [redacted] are presently being examined by your office.

[redacted] (E.I.N. [redacted]), a Delaware Corporation was the parent corporation of an affiliated group of corporations which filed consolidated income tax returns for the taxable years ended [redacted], [redacted], [redacted], [redacted] and [redacted].

In [redacted], [redacted] merged with [redacted], a Delaware corporation via the creation by [redacted] of a merger subsidiary called [redacted]. Pursuant to the merger agreement dated [redacted], [redacted] merged with and into [redacted] with [redacted] surviving. [redacted] is now a wholly owned subsidiary of [redacted] and has retained employer identification number [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 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). Section 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 my be made in respect of 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).

Treas. Reg. § 1.1502-77T provides for alternative agents and applies if the corporation that is the common parent of the group ceases to be the common parent, whether or not the group remains in existence. Temp. Reg. § 1.1502-77T provides that a waiver of the statute of limitations, with respect to the consolidated group, given by any one or more corporations referred to in

paragraph (a)(4) of the section is deemed to be given by the agent of the group. Subparagraph (a)(4)(i) lists as an alternative agent the common parent of the group for all or any part of the year to which the notice or waiver applies. Since [redacted] was the common parent of the group for the taxable years ended [redacted], [redacted], [redacted], [redacted] and [redacted] and is still in existence, subparagraph (a)(4)(i) applies. Therefore, [redacted] is the proper party to execute the consents to extend the period of limitations for all members of the group.

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. In accordance with I.R.C. § 6501(c)(4), a taxpayer and the Internal Revenue Service may consent in writing to extensions of time for making assessments. The regulations under this Code section do not specify who may sign such consents; however, the Service generally applies the rules applicable to execution of the original returns to consents to the extension of time to make an assessment. I.R.C. § 6062 provides generally that a corporation's income tax return must be signed by the president, vice-president, treasurer, assistant treasurer, chief accounting officer or any other officer duly authorized to act. The fact that an individuals's name is signed on the return is prima facie evidence that the individual is authorized to sign the return. Rev. Rul. 83-41, 1983-1 C.B. 399 clarified and amplified, Rev. Rul. 84-165, 1984-2 CB. 305.

Accordingly, a current officer of [redacted] in his or her capacity as an officer of the corporation is the proper party to execute a Form 872, Consent to Extend the Time to Assess Tax, for [redacted] and Subsidiaries for the taxable years ended [redacted], [redacted], [redacted], [redacted] and [redacted]. Treas. Reg. Rev. Rul. 83-41, 1983-1 C.B. 399 clarified and amplified, Rev. Rul. 84-165, 1984-2 CB. 305.

We recommend that the caption of the Form 872 identifying the taxpayer read as follows: "[redacted]**". At the bottom of the form you should add the following: "* This is with regard to the consolidated tax liability of the [redacted] consolidated group for the group's taxable years ended [redacted], [redacted], [redacted], [redacted], and [redacted]." On the back of the second page of the Form 872 after the line for the current officer's signature, type in his name, his title, and the name of the corporation for which he is signing the Form 872. Also, make sure that he is an officer of that corporation.

I.R.C. § 6501(c)(4)(B) provides that the Service shall notify the taxpayer of their right: 1) to refuse to extend the period of limitations; or 2) to limit such extension to particular issues; or 3) to limit the extension to a particular period of time. This notice must be provided each time an extension is requested. The legislative history of this provision states that Congress believed that taxpayers should be fully informed of their rights with respect to the statute of limitations on assessment. Congress expressed concern that in some cases taxpayers were not fully aware of their rights to refuse to extend the statute of limitations, and have felt that they had no choice but to agree to extend the statute of limitations upon the request of the Service. See H.R. Conf. Rep. No. 105-599 at 286 (1998).

As part of RRA 98 training, Service personnel were instructed that section 6501(c)(4)B) can be satisfied by informing taxpayers, either orally or in writing, of their right to refuse to consent to an extension of the statute of limitations, or to limit such an extension to specific issues or to a specific time frame. Service personnel were advised to secure consents to extend statutes of limitations by sending Letter 907(DO)(Rev. 2-2000) or Letter 907(SC)(Rev. 12-1999). See IRM 4541.1 and IRM 121.2.22.3. Service personnel were advised they could provide the taxpayer with a copy of Publication 1035, Extending the Tax Assessment Period (Rev. 12-1999), each time a statute extension was requested, but the best practice would be to advise taxpayers of their rights by sending Letter 907(DO)(Rev. 2-2000), Letter 907(SC)(Rev. 12-1999), or Letter 967 (Rev. 12-1999). (See IRS RRA 98 National Resource Center Question 203.) Service personnel were instructed to document their actions.

On the facts provided, there does not appear to be potential transferee liability. [redacted] survives and retains the same employer identification number. Accordingly, it does not appear necessary to secure either Form 2045, Transferee Agreement or Form 977, Consent to Extend the Time to Assess Liability at Law or in Equity for Income, Gift and Estate Tax Liability Against a Transferee or Fiduciary.

If you need further assistance, please contact Paul Colleran at (617) 565-7838.

BARRY J. LATERMAN
Special Litigation Assistant