Office of Chief Counsel
Internal Revenue Service

memorandum

CC:LM:FSH:MAN:1:TL-N-7157-00
VJKanrek

date: JUN 22 2001

to: Henry V. Singleton, Territory Manager, LM:FS
Attention: David Litvin, Team Coordinator, Group 1105

from: Area Counsel
(Financial Services)

---

subject: [redacted]
STATUTES OF LIMITATION EXPIRE: [redacted]
UIL Nos. 6501.08-00 and 6501.08-17

[redacted]
STATUTES OF LIMITATIONS EXPIRE: [redacted]
UIL Nos. 6501.08-00 and 6501.08-17

INTRODUCTION

This memorandum responds to your request for assistance dated March 27, 2001. This memorandum should not be cited as precedent. Specifically, you have asked our office to provide you with the appropriate language to use on two Forms 872 Consent to Extend the Time to Assess Tax ("Form 872"), one for [redacted] and one for [redacted], each for the taxable years ending [redacted], [redacted], [redacted], [redacted] and [redacted].

ISSUES

1. What entity is the proper entity to execute a Form 872 for [redacted] for the taxable years ending [redacted], [redacted], [redacted], [redacted] and [redacted]?

2. What specific language should be used on the Form 872 [redacted] for the taxable years ending [redacted], [redacted], [redacted], [redacted] and [redacted]?

3. What entity is the proper entity to execute a Form 872 for [redacted] for the taxable years ending [redacted], [redacted], [redacted], [redacted] and [redacted]?

4. What specific language should be used on the Form 872 for [redacted] for the taxable years ending [redacted], [redacted], [redacted], [redacted] and [redacted]?

BACKGROUND

This opinion is based upon the facts set forth herein. It might change if the facts are determined to be incorrect. If the facts are determined to be incorrect, this opinion should not be relied upon. You should be aware that, under routing procedures which have been established for opinions of this type, we have referred this memorandum to the National Office of the Office of Chief Counsel for review. Such review might result in modifications to the conclusions herein. We will inform you of the result of the review as soon as we hear from that office, which should be in approximately 10 days. In the meantime, the conclusions reached in this opinion should be considered to be only preliminary.

[redacted] (EIN [redacted]) is a banking corporation organized and existing under the laws of the [redacted]. For each of the taxable years ending [redacted], [redacted], [redacted], [redacted] and [redacted], [redacted] filed a Form 1120F, U.S. Income Tax Return of a Foreign Corporation. The previous Form 872 extending until [redacted], the statute of limitations on assessment for the taxable years ending [redacted] through [redacted], is in the name of "[redacted]."

[redacted] (EIN [redacted]) is a Delaware Corporation. For each of the taxable years ending [redacted], [redacted], [redacted], [redacted] and [redacted], [redacted]. filed a consolidated return as common parent for a group of affiliated companies comprised of approximately twenty subsidiaries. The previous Form 872 extending through [redacted], the statute of limitations on assessment for the taxable years ending [redacted] through [redacted], is in the name of "[redacted]."

The following is a brief synopsis of recent relevant corporate transactions, as provided by the taxpayer.

1. In [redacted], [redacted] is formed. [redacted] owns [redacted]% of the stock of [redacted].

2. In [redacted], [redacted] is formed, with [redacted] owning [redacted]% of the [redacted] stock.

3. On [redacted], [redacted], a Delaware corporation is formed.

4. On [redacted], [redacted] contributes its [redacted] stock to [redacted] in exchange for [redacted] stock.

5. On [redacted], [redacted] contributes its [redacted] stock to [redacted] in exchange for [redacted] stock.

6. At this point, [redacted] owns [redacted]% of [redacted] stock, [redacted] owns [redacted]% of [redacted] stock and [redacted]% of [redacted].

7. On [redacted], [redacted] (through [redacted]) purchased all outstanding shares of [redacted] for cash. [redacted] was merged into [redacted], with the latter being the surviving corporation.

8. After the merger, (a) [redacted] owned [redacted]% of [redacted], and (b) [redacted] owned [redacted]% of [redacted] stock and [redacted]% of [redacted] stock, both of which are still in existence.

The taxpayer has stated that it has no documentation (other than the Merger Agreement with respect to item 7, above) to substantiate or otherwise describe the aforementioned transactions. We have reviewed that Merger Agreement and agree that the description provided by the taxpayer with respect to item 7, above, is accurate. You are comfortable relying on the representations of the taxpayer as to all of these transactions having occurred.

DISCUSSION

I.R.C. § 6501(a) provides generally that the amount of any tax shall be assessed within three years after the relevant tax return was filed. Under I.R.C. § 6501(c)(4), the Service and a taxpayer may consent in writing to an extension of the time for making an assessment if the consent is executed before the expiration of the previously existing period, i.e., either the original statutory period set forth in I.R.C. § 6501(a) or an extended period established in a prior written extension

agreement between the parties. A Form 872, Consent to Extend the Time to Assess Tax, is used to so extend the limitations period.

1. What entity is the proper entity to execute a Form 872 for [redacted] for the taxable years ending [redacted], [redacted], [redacted], [redacted] and [redacted]?

[redacted] files its own Form 1120F, U.S. Income Tax Return of a Foreign Corporation. The existence of [redacted] has not been altered by any of the transactions described by the taxpayer. Therefore, the appropriate entity to execute a Form 872, Consent to Extend the Statute of Limitations on Assessment, for [redacted] is [redacted].

Neither I.R.C. § 6501(c)(4) nor the regulations thereunder specify who may sign consents. The Service therefore applies the rules applicable to the execution of the original returns to the execution of Forms 872. Rev. Rul. 83-41, 1983-1 C.B. 399, clarified and amplified, Rev. Rul. 84-165, 1984-2 C.B. 305.

I.R.C. § 6061 provides that any return, statement or other document made under any internal revenue law must be signed in accordance with the applicable forms or regulations. I.R.C. § 6062 provides that a corporation's income tax return must be signed by the president, vice-president, treasurer, assistant treasurer, chief accounting officer or other officer duly authorized to act on behalf of the corporation. Accordingly, any such corporate officer may sign a Form 872, whether or not that individual signed the related corporate income tax return. Rev. Rul. 84-165, 1984-2 C.B. 305.

Based upon the above, a Form 872 extending the assessment limitations period for the taxable years ending [redacted], [redacted], [redacted], [redacted] and [redacted] of [redacted] should be executed by an authorized officer of [redacted].

2. What specific language should be used on the Form 872 for [redacted] for the taxable years ending [redacted], [redacted], [redacted], [redacted] and [redacted]?

We suggest that the following language be used in a Form 872 to extend the taxable years ending [redacted], [redacted], [redacted], [redacted] and [redacted] of [redacted]:

[redacted] (EIN [redacted])

3. What entity is the proper entity to execute a Form 872 for [redacted] for the taxable years ending [redacted], [redacted], [redacted], [redacted] and [redacted]?

Pursuant to Treas. Reg. § 1.1502-77(a), the common parent of a group of affiliated corporations filing a consolidated income tax return for a particular consolidated return year is the sole agent for each member of the group and, as such, is authorized to act in its own name in all matters relating to each group member's income tax liability for its tax year included in that consolidated income tax return. Pursuant to Treas. Reg. § 1.1502-77(c), unless there is an agreement to the contrary, a Form 872 entered into by a group's common parent for a particular consolidated return year will apply to extend the period of limitations on assessment of income tax for the tax year of each group member included in that consolidated return.

Further, under Treas. Reg. § 1.1502-77(a), a consolidated group's common parent for a particular consolidated return year remains the sole agent for the other members of the group for such year so long as the common parent continues its corporate existence, 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. § 1502-77(a)1; Southern Pacific v. Commissioner, 84 T.C. 395, 401 (1985).

With respect to the relevant transactions as described by the taxpayer, we note that [redacted] continues to exist as the common parent of the affiliated companies with which it files a consolidated return. Based on the foregoing, [redacted] remains the appropriate entity to execute a Form 872, Consent to Extend the Statute of Limitations on Assessment with respect to itself and the affiliated companies with which it files a consolidated return.

Neither I.R.C. § 6501(c)(4) nor the regulations thereunder specify who may sign consents. The Service therefore applies the rules applicable to the execution of the original returns to the execution of Forms 872. Rev. Rul. 83-41, 1983-1 C.B. 399, clarified and amplified, Rev. Rul. 84-165, 1984-2 C.B. 305.

I.R.C. § 6061 provides that any return, statement or other document made under any internal revenue law must be signed in accordance with the applicable forms or regulations. I.R.C. § 6062 provides that a corporation's income tax return must be signed by the president, vice-president, treasurer, assistant

treasurer, chief accounting officer or other officer duly authorized to act on behalf of the corporation. Accordingly, any such corporate officer may sign a Form 872, whether or not that individual signed the related corporate income tax return. Rev. Rul. 84-165, 1984-2 C.B. 305.

Based upon the above, a Form 872 extending the assessment limitations period for the taxable years ending [redacted], [redacted], [redacted], [redacted] and [redacted] of [redacted] should be executed by an authorized officer of [redacted].

4. What specific language should be used on the Form 872 for [redacted] for the taxable years ending [redacted], [redacted], [redacted], [redacted] and [redacted]?

We suggest that the following language be used in a Form 872 to extend the taxable years ending [redacted], [redacted], [redacted], [redacted] and [redacted] of [redacted]:

[redacted] (EIN [redacted])
[redacted] *

On the bottom on the front page of the Form 872, include the following:

* This is with respect to the [redacted] for the taxable years ending [redacted], [redacted], [redacted], [redacted] and [redacted].

PROCEDURAL CONSIDERATIONS

Please note that Section 3461 of the I.R.S. Restructuring and Reform Act of 1998, codified in I.R.C. § 6501(c)(4)(B), requires the Service, each time that it requests a taxpayer to extend the limitations period, to advise the taxpayer of the right (i) to refuse to extend the statute of limitations on assessment, or, in the alternative, (ii) to limit an extension to particular issues or for specific periods of time. To satisfy this requirement, you may provide Publication 1035, "Extending the Tax Assessment Period," to the taxpayers when you solicit the consents. Alternatively, you may advise the taxpayers 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 files.

In addition to the recommendations made herein, we further recommend that you pay strict attention to the rules set forth in the IRM. Specifically, the IRM requires use of Letter 907(DO) to solicit a Form 872, Letter 928(DO) as a follow-up letter to Letter 907(DO)(when appropriate), and Letter 929(DO) to transmit a copy of the executed consent to the taxpayer. See IRM Handbook No. 121.2.22.3 and No. 121.2.22.4.2. Dated copies of these letters should be retained in the case file(s) as directed. When the signed Forms 872 are received from the taxpayers, the responsible manager - that is, one who reports to the Director of an LMSB Industry Group - should promptly sign and date them in accordance with Treasury Regulation § 301.6501(c)-1(d) and IRM, Handbook No. 121.2.22.5.10. The manager must also update the respective statutes of limitations in the continuous case management statute control files and properly annotate Form 895 or equivalent. See IRM, Handbook No. 121.2.22.5.11(1)(g). In the event a Form 872 becomes separated from the file or lost, these other documents would become invaluable to establish the agreement.

This advice relates solely to the facts of this case and should not be used or applied to the facts of any other case. If you have any questions concerning this memorandum, please contact Victoria J. Kanrek at (212) 264-1595, ext. 238.

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.

ROLAND BARRAL
Area Counsel - LMSB:FSH Area 1

By:_____
VICTORIA J. KANREK
Senior Attorney (LMSB)