Office of Chief Counsel
Internal Revenue Service

memorandum

CC:LM:NR:DEN:TL-N-1609-01
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date: MAR 23 2001

to: Taleen Lobsinger
Team Coordinator, LMSB NR 1416

from: Area Counsel
(Natural Resources:Houston)

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subject: **Request for Advisory Opinion**
Entity Name for a Consents to Extend the Statute of Limitations
Taxpayer: [redacted]

We are writing in response to your memorandum dated March 7, 2001, sent to us by e-mail.

ISSUE

When a corporation becomes part of a consolidated group for tax years after the years at issue, whether the taxpayer name on a consent to extend the statute of limitations should be the name of the taxpayer or the name of the consolidated group.

CONCLUSION

The taxpayer's name on the consent to extend the statutes of limitations should be the name of the taxpayer, not the name of the new consolidated group.

FACTS

The taxpayer, [redacted], filed separate returns for [redacted] through [redacted], which are currently being audited. In the tax year ending [redacted], the taxpayer became part of a consolidated group with [redacted] as the parent. Prior to [redacted], consents to extend statutes of limitations for the years under audit were executed by the taxpayer and the IRS. The consents listed the taxpayer as [redacted]. The extended statutes of limitations expire on [redacted], and new consents to further extend the statutes of limitations are being prepared.

ANALYSIS

Under I.R.C. § 1501, an affiliated group of corporations may elect to file a single consolidated income tax return for a taxable year, rather than separate returns. Even though the separate corporations of an electing affiliated group file a single income tax return, they remain separate corporations.

The IRS is authorized to prescribe regulations governing consolidated returns. I.R.C. § 1502. One such regulation mandates that:

> The common parent, for all purposes other than [certain exceptions not applicable here], shall be the sole agent for each subsidiary in 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) (emphasis added).

The regulations further state 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 or levy or proceeding in court begun *in respect of the tax for a consolidate return year* shall be applicable -
>
> (1) To each corporation which was member of the group *during any part of such taxable year,* and
>
> (2) To each such corporation the income of which was included *in the consolidated return for such taxable year,* notwithstanding that the tax liability of such corporation is subsequently computed on the basis of a separate return under the provisions of § 1.1502-75.

Treas. Reg. § 1.1502-77(c) (emphasis added).

On September 26, 2000, proposed regulations to amend Treas. Reg. § 1.1502-77 were published in the Federal Register. The proposed regulations do not change the limitation of the common parent's authority to years for which consolidated returns were filed.

The regulations specify that the common parent is the proper party to deal with and the proper party to sign consents to extent the assessment statute of limitations for any years for

which the affiliated group files consolidated returns. By implication, the separate corporations making up the affiliated group remain the proper party to deal with and to sign any consents to extend the statute of limitations for any years for which separate returns are filed.

The IRS has set forth procedures under which a parent corporation can sign one agreement to consent to extend the assessment statute of limitations for itself and any or all of the separate returns of its subsidiary. Rev. Proc. 72-38, 1972-2 C.B. 813. This Revenue Procedure recognized that, absent this procedure a separate consent would have to be obtained for each entity.

In this case, the years under audit are years for which [redacted] filed separate returns, prior to the election by the affiliated group to file consolidated returns. Since the years at issue are years for which [redacted] filed separate returns, the consents to extend the assessment statutes of limitations for these years should name [redacted] as the taxpayer and should be executed by [redacted]. [redacted] is the only entity in the affiliated group that is at issue here. This case does not involve multiple entities controlled by the same parent, so the procedures under Rev. Rul. 72-38 do not apply.

If you have any questions in this matter, please feel free to contact me.

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By: _____
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