Office of Chief Counsel
Internal Revenue Service

memorandum

CC:NER:MAN:TL-N-2455-00
OMendiburt

date:

to: Chief, Examination Division, Manhattan District
Attention: Stella Chung, Manager, Group 1113

from: District Counsel, Manhattan

subject: [redacted]

Taxable Years Ended: [redacted] **and** [redacted]

Statute of Limitations Expires: [redacted]

Uniform Issue List # 6501.08-00; 1502.77-01

We have been asked for advice concerning how the parties can properly extend the statute of limitations on assessment for the above referenced taxpayer's [redacted] and [redacted] taxable year. Our advice relies on facts presented by Samiron Chatterjee, the team coordinator. The advice rendered in this memorandum is conditioned on the accuracy of the facts provided to us. We have discussed this case with Daniel Hiens of the National Office.

Issue:

1. What specific language, if any, should be used on the consent to extend the statute of limitations on assessment for the taxpayer for the tax year [redacted] and [redacted].

2. [redacted].

Conclusion:

1. [redacted] (EIN: [redacted]) changed its name to [redacted] (EIN: [redacted]). Accordingly, the Internal Revenue Service Form 872 should read as follows:

[redacted] (EIN: [redacted], formerly known as

[redacted] (EIN: [redacted])*

* This is with respect to the consolidated tax liability of [redacted] (EIN: [redacted]) [redacted] consolidated group for the taxable years ending [redacted] and [redacted].

The "*" and the above paragraph should be placed in the bottom margin of the first page of the Form 872.

2. (b)(5)(AC) [redacted],

Facts:

The taxpayer, [redacted] ("[redacted]") (EIN: [redacted]) is a corporation incorporated under the laws of Delaware. For the tax years [redacted] and [redacted] [redacted] acted as the common parent of an affiliated group of corporations and filed consolidated Federal corporate income tax returns ("Forms 1120") with its affiliates. On [redacted], [redacted] changed its name to [redacted] ("[redacted]") but retained the same employee identification number, [redacted].

On [redacted], [redacted] Vice President executed a Form 872, Consent to Extend the Time to Assess Tax, extending the time to assess for [redacted] and [redacted] until [redacted] ("the [redacted] consent"). The Examiner used "[redacted]" and "[redacted]" as the taxpayer's name and EIN, respectively, on the Form 872.

Discussion:

Proper Party to Execute Consent to Extend the Time to Assess Tax

In general, the statute of limitations on assessment expires three years from the date a taxpayer files a tax return for such tax year. I.R.C. §6501(a). Section 6501(c)(4), however, provides an exception to the general three year statute of limitations on assessment. In accordance with this exception, the Secretary and the taxpayer may consent in writing to an agreement to extend the statute of limitations prior to the expiration of the statute of limitations period. The Service created Form 872 for this purpose.

In the case of a consolidated group, guidance as to the appropriate entity to enter into a consent to extend the statute of limitations on assessment can be found in the consolidated

return regulations. Treas. Regs. §1.1502-1 et. seq. Pursuant to the consolidated return regulations, the common parent is the sole agent for each member of the group, duly authorized to act in its own name in all matters relating to the income 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 been given or executed by each such subsidiary. Treas. Reg. §1.1502-77(a). Unless there is an agreement to the contrary, an agreement entered into by the common parent extending the time within which an assessment of income tax may be made for the consolidated return year shall be applicable to each corporation which was a member of the group during any part of such taxable year. Treas. Reg. §1.1502-77(c).

The common parent remains the agent for the members of the group for any year during which it was the common parent, 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. § 1.1502-77(a); Southern Pacific v. Commissioner, 84 T.C. 395, 401 (1985). Accordingly, as a general rule, the common parent remains the proper party to extend the statute of limitations for any taxable year for which it was the common parent, as long as it remains in existence. Thus, [redacted] is the proper entity to execute the waiver of the statute of limitations.

However, since [redacted] changed its name to [redacted] the name of the entity on the Form 872 should appear as follows:

[redacted] (EIN: [redacted]), formerly known as [redacted] (EIN: [redacted]) *

In the bottom margin of the form or at some convenient location, place an asterisk and the following language:

* This is with respect to the consolidated tax liability of [redacted] (EIN: [redacted]) [redacted] consolidated group for the taxable years ending [redacted] and [redacted].

In the case of a corporate return, section 6062 provides that a corporation's income tax returns must be signed by the president, vice-president, treasurer, assistant treasurer, chief accounting officer or any other officer duly authorized to act. Since the rules applicable to the execution of an original return also apply to a consent to extend the statute of limitations, any such consent may be signed by the above-noted individuals. Rev. Rul. 83-41, 1983-1 C.B. 349, clarified and amplified, Rev.

Rul. 84-165, 1984-2 C.B. In the subject case, any current officer of [redacted] EIN: [redacted] of the type set forth in section 6062 may sign the consent.

In addition to the recommendations made herein, we further recommend that you pay strict attention to the rules set forth in the IRM. Specifically, IRM 4541.1(2) requires use of Letter 907(DO) to solicit the Form 872, and IRM 4541.1(8) 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 responsible manager should promptly sign and date it in accordance with Treas. Reg. § 301.6501(c)-1(d) and IRM 4541.5(2). 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.

Please note that Section 3461 of the Restructuring and Reform Act of 1998, codified in Section 6501(c)(4)(B), requires IRS to advise taxpayers of their right to refuse to extend the statute of limitations on assessment, or in the alternative to limit an extension to particular issues or for specific periods of time, each time that the Service requests that the taxpayer extend the limitations period. To satisfy this requirement, you may provide Pub. 1035, "Extending the Tax Assessment Period," to the taxpayer when you solicit the Form 872. Alternatively, you may advise the taxpayer orally or 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 file.

(b)(5)(AC) [redacted]

I.R.C. § 6501(c)(4) refers to agreements between the Secretary and the taxpayer to extend the time to assess. In this instance, [redacted] is the taxpayer to extend the time to assess as stated above. The (b)(5)(AC) [redacted].

The Tax Court has considered contract principles to resolve disputes that involve a consent to extend the time to assess. Woods v. Commissioner, 92 T.C. 776, 780 (1989). [redacted]

(b)(5)(AC) [redacted].

In Woods, the Court reformed the language on the consent to conform to the parties' intent. Woods at 782-83. The Service in Woods had used the wrong taxpayer name on the Form 872. The Court made a factual determination that the parties intended and agreed to extend the assessment period for the proper company. Id. at 781. [redacted]

(b)(5)(AC) [redacted]

Note that the proper person to execute the consent on behalf of the corporation should be a corporate officer as addressed above. (b)(5)(AC) [redacted].

LINDA R. DETTERY
District Counsel

By: _____
PETER J. LaBELLE
Assistant District Counsel

Noted:
Linda R. Dettery
District Counsel

cc: Paulette Segal
Assistant Regional Counsel (LC) (via e-mail)

Mary Helen Weber
Assistant Regional Counsel (LC) (via e-mail)

Michael P. Corrado
Assistant Regional Counsel (TL) (via e-mail)

Theodore R. Leighton
Assistant District Counsel (via e-mail)