Office of Chief Counsel
Internal Revenue Service

memorandum

CC:WR:LAD:LA:TL-N-4147-00
KHAnkeny

date: July 28, 2000

to: Examination Division, Los Angeles District, Glendale
Larry Benjamin, Revenue Agent, Group 1225

from: District Counsel, Los Angeles District, Los Angeles

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subject: **Extending the Period of Limitations for [redacted]**

DISCLOSURE STATEMENT

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ISSUE

For the [redacted] and [redacted] tax years, which entity is the proper party to sign the Forms 872 to extend the time to assess the income tax liability of [redacted] and its subsidiaries?

CONCLUSION

[redacted] should sign the Forms 872 for the [redacted] consolidated group. [redacted]'s president, vice president, treasurer, assistant treasurer, chief accounting officer, or any other current officer duly authorized to act may sign the Forms 872 on behalf of [redacted].

FACTS

On [redacted], [redacted] merged with a second-tier subsidiary of [redacted] [redacted] states that this merger was a statutory merger under sections 368(a)(1)(B) and 368(a)(2)(E) and that [redacted] was the surviving corporation.

On July 25, 2000, you confirmed with the Michigan Secretary of State that the [redacted] that was incorporated on [redacted] is still incorporated and in good standing in Michigan. However, [redacted]'s EIN as listed by the Michigan Secretary of State [redacted] is off by one digit from [redacted]'s EIN as stated on [redacted]'s [redacted] and [redacted] consolidated income tax returns [redacted].

On [redacted], [redacted] [redacted]'s Vice President, Taxation, faxed us a letter, confirming that [redacted] was incorporated in Michigan on [redacted] and remains in good standing:

> You have brought to our attention the fact that Michigan shows [redacted] EIN as [redacted]. This appears to be a keypunch error on the part of the state. The companies are one and the same. Thank you for bringing this error to our attention.

[redacted] attached a copy of [redacted]'s [redacted] annual filing with and check to the State of Michigan.

On page one of the proposed Form 872 for the [redacted] tax year, you identified the name of the taxpayer as:

[redacted]

> With respect to the consolidated tax liability of the [redacted] [redacted] (E.I.N. [redacted] consolidated group for tax year [redacted].

The proposed Form 872 for the [redacted] tax year is identical, except that the tax year is identified as [redacted].

DISCUSSION

[redacted] should sign the Forms 872 for the [redacted] consolidated group.

Generally, the common parent is the exclusive 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. Id. Thus, the common parent is the proper party to sign Forms 872 for all members of the group. Id. Where the common parent remains in existence, even if it is no longer the common parent, it remains the agent for the group with regard to years in which it was the common parent of the group. Id.

Temp. Reg. § 1.1502-77T modifies the "exclusive agent" rule of Treas. Reg. § 1.1502-77(a). When a common parent ceases to be the common parent of a group, whether or not the group remains in existence, Temp. Reg. § 1.1502-77T(a)(4) provides "alternative agents" for the affiliated group for purposes of mailing notices of deficiency and for executing waivers of the period of limitations. Under Temp. Reg. § 1.1502-77T(a)(4)(i), "[t]he common parent of the group for all or any part of the year to which the notice or waiver applies" may act as an alternative agent for the group.

Under both Treas. Reg. § 1.1502-77(a) and Temp. Reg. § 1.1502-77T, [redacted] is the proper party to execute the Forms 872. [redacted] was the common parent for all of [redacted] and [redacted]. After the [redacted] merger, [redacted] ceased to be the common parent. However, [redacted] still exists as a Michigan corporation.

The Forms 872 should be signed by [redacted]'s president, vice president, treasurer, assistant treasurer, chief accounting officer, or any other current officer duly authorized to act. I.R.C. §§ 6061(a), 6062; Rev. Rul. 83-41, 1983-1 C.B. 349, clarified and amplified, Rev. Rul. 84-165, 1984-2 C.B. 305. After the signature line, the name of the signatory and his title should be typed in.

We do recommend one change in the completed Forms 872. The corporate name on the second page of the prior Form 872 that was signed on [redacted] is "[redacted]." We recommend that the corporate name on the second page of the Forms 872 be "[redacted]"

In accordance with CCDM(35)3(19)4, we are furnishing a copy of this advisory opinion applying well-settled principles of law to the Assistant Chief Counsel (Field Service) for 10-day, post-issuance review. We will let you know whether the Assistant Chief Counsel agrees with this advice.

Please call Ms. Ankeny at 213-894-3027, ext. 155, if you have any questions.

JAMES A. NELSON
District Counsel

By: _____
KATHERINE H. ANKENY
Attorney