Office of Chief Counsel
Internal Revenue Service

memorandum

CC:LM:RFP:CHI:1:POSTF-151850-01
PPDavis

date: October 22, 2001

to: John Peterson, Team Coordinator
[redacted], CEP team

from: Associate Area Counsel, LMSB Chicago

subject: [redacted]
EIN [redacted]
Taxable Years [redacted], [redacted], [redacted] **and** [redacted]
Earliest SOL: [redacted]
Consent Language
Request For Advisory Opinion (Form 872)

This memorandum responds to your request for assistance dated September 20, 2001. This memorandum should not be cited as precedent. The issues herein do not appear to be within the scope of the responsibility of any Industry Counsel.

QUESTION PRESENTED

1. Under the facts set forth below, how should the name line and taxpayer signature line on the Consent Form(s) be prepared?

FACTS

On [redacted], [redacted] ("Old [redacted]"), EIN [redacted], merged with and into [redacted]. Simultaneously with the merger, [redacted]'s name was changed to [redacted] ("New [redacted] and New [redacted] acquired all of the assets of Old [redacted]. This is reflected on the Form 8-K filed with the SEC by New [redacted] on [redacted].

On [redacted], New [redacted], acquired [redacted]. On [redacted], New [redacted]'s name was changed from [redacted], to [redacted]. This is reflected on the Form 8-K filed with the SEC by

[redacted] on [redacted].

The statute of limitations for matters regarding [redacted]'s [redacted], [redacted] and [redacted] return will expire on [redacted].

You are in the process of conducting the audit of the U.S. Income Tax Return (Form 1120) of [redacted] for the taxable years [redacted], [redacted], [redacted] and [redacted]. Pursuant to a previously executed Consent To Extend Time to Assess Tax (Form 872), the period of limitations for the taxable years [redacted] and [redacted] will expire on [redacted]. You desire to obtain a consent to extend the period of assessment of income tax for the years [redacted] and [redacted] and have requested advice concerning the proper name to be used for the taxpayer.

CONCLUSION

1. With respect to the preparation of the Form 872 for the taxable years [redacted] and [redacted], the name line on the Form 872 should read,

"[redacted]
formerly known as [redacted]"

Treas. Reg. § 1.1502-77(a) provides that the common parent shall be the sole agent for each subsidiary in the group, duly authorized to act in its own name in all matters relating to tax liability for the consolidated return year.

Though its name changed, New [redacted] survived the merger with [redacted]. New [redacted] is thus the proper agent to sign the Form 872. New [redacted]'s name is now [redacted] and thus [redacted] should appear on the name line on the Form 872.

The corporate name should include the phrase "and Subsidiaries". Treas. Reg. § 1.1502-6(a) provides that the common parent and each subsidiary which was a member of the consolidated group during any part of the consolidated return year shall be severally liable for the entire consolidated tax for such year. Since [redacted] and each of its subsidiaries are severally liable for the tax from the tax years in question, the subsidiaries language should be included on the name line.

2. With respect to the preparation of the Form 872 for the

taxable years [redacted], [redacted], and [redacted], the corporate name on the signature line should read,

[redacted]

formerly known as [redacted],

and the Form 872 should be signed by an authorized officer of [redacted].

I.R.C. § 6061 provides that any return, statement or other document made under Internal Revenue law must be signed in accordance with applicable forms or regulations.

The regulations under I.R.C. § 6501(c)(4) do not specify who may sign consents, so the Service will apply the rules applicable to original returns to the execution of consents to extend time to make an assessment. Rev. Rule 83-41, clarified and amplified, Rev. Rule 84-165.

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 any other officer duly authorized to act.

I.R.C. § 6064 provides that the fact that an individual's name is signed on the return is prima facie evidence that the individual is authorized to sign the return. Accordingly, any such officer of a corporation may sign the Form 872 consent.

In accordance with LMSB procedures, we are submitting this advisory opinion for review by our National Office and anticipate a response from the National Office in approximately ten days. As you know, the response can supplement, modify and/or reject the advice contained herein. Accordingly, please take no action on the advice contained herein until such time as we notify you as to whether or not there are any exceptions or modifications to the advice contained herein as a result of the response received from the National Office.

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.

If you have any questions concerning this matter, please call me at (312) 886-9225 ext. 336.

PAMELA V. GIBSON
Associate Area Counsel
(Large and Mid-Size Business)

By:_____
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Attorney