Office of Chief Counsel
Internal Revenue Service

memorandum

CC:NER:NED:BOS:TL-N-2013-00
BJLaterman

date:

to: District Director, New England District
Jim Biracree, Case Manager
Attn: Dennis Courtemanche, Team Coordinator

from: District Counsel, New England District, Boston

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subject: [redacted]
[redacted] Statute Extension
Statute Expiration: [redacted]

This is in response to your request that we provide advice regarding extending the statute of limitations for the above-mentioned consolidated group's [redacted] taxable year.

[redacted] was the parent corporation of an affiliated group of corporations which filed consolidated federal income tax returns for the taxable years [redacted] through [redacted]. During the taxable years [redacted] through [redacted], [redacted] had [redacted] subsidiaries. In [redacted], the [redacted] group was "reorganized". As a result of the [redacted] reorganization, [redacted] and some of its subsidiaries are now subsidiaries of [redacted]. The other subsidiaries of [redacted] remained subsidiaries of said corporation.

The [redacted] through [redacted] returns of [redacted] were signed by [redacted], Vice President, CFO and Treasurer. A statute extension has been secured for [redacted] and it was signed by [redacted], CFO of [redacted]. The directors of [redacted] authorized [redacted], CFO of [redacted] to execute a Form 872 to extend the [redacted] statute of limitations to [redacted]. [redacted] President of [redacted], will be signing the [redacted] extension.

Generally, the common parent, with certain exceptions not applicable here, is the sole 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. Treas. Reg. § 1.1502-77(a). Thus, generally the common parent is the proper party to sign consents, including the Form 872 waiver to extend the period of limitations, for all members in the group. Treas. Reg. § 1.1502-77(a). Furthermore, the provisions of Treas. Reg. § 1.1502-77(c) shall apply whether or not a consolidated return is made for any subsequent year, and whether or not one or more subsidiaries have become or have ceased to be members of the group at any time.

Treas. Reg. § 1.1502-77(c) provides 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 in respect of the tax for a consolidated return year, shall be applicable to each corporation which was a member of the group during any part of such taxable year. The common parent and each subsidiary which was a member of the consolidated group during any part of the consolidated return year is severally liable for the tax for such year. Treas. Reg. § 1.1502-6(a).

Temporary Regulation § 1.1502-77T(a)(4) provides for agents if the common parent ceases to be common parent of the consolidated group, whether or not the consolidated group remains in existence. Pursuant to Temporary Regulation § 1.1502-77T(a)(4), an agent for the group is:

> (i) The common parent of the group for all or any part of the year to which the notice or waiver applies.

Temporary Regulation § 1.1502-77T(a)(4) is applicable to waivers of the statute of limitations for taxable years for which the due date without extensions of the consolidated return is after September 7, 1988. Temp. Reg. § 1.1502-77T(a)(3). Therefore, said regulation provision is applicable in this case.

In this case, the common parent is still in existence and, therefore, is the agent for the consolidated group in existence in [redacted] under the provisions of Temporary Regulation § 1.1502-77T(a)(4)(i). The caption on the Form 872 should be [redacted].* At the bottom of the page you should add: * [redacted] has executed the Form 872 as agent for the [redacted] consolidated group for its [redacted] taxable year. Therefore, based on the facts provided we conclude that a Form 872 executed by a current officer of [redacted] the still existing parent of the group for the [redacted] taxable

year will extend the period for assessment of tax for said taxable year.

If we can be of any further assistance, please feel free to contact the undersigned at 617/565-7855.

BARRY J. LATERMAN
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