Office of Chief Counsel
Internal Revenue Service

# memorandum

CC:NER:MIC:DET:TL-N-1097-98
ERSkinner

date: FEB 04 1999

to: Chief, Examination Division, Michigan District
Attn: Branch 1 Case Manager Larry Strong

from: District Counsel, Michigan District, Detroit

subject: **Proposed Closing Agreement -** [redacted]

In response to your memorandum dated December 15, 1998, regarding the appropriate taxpayer name to be used in preparing a proposed closing agreement, we have reviewed (1) the "Closing Agreement On Final Determination Covering Specific Matters" for [redacted] for the taxable years [redacted] through [redacted], (attachment A) which you have stated you intend to use as a format for the [redacted] taxable year, and (2) a copy of the certificate of amendment of certificate of incorporation filed by [redacted] (attachment B). We have concluded that the appropriate taxpayer name to be used in preparing the proposed closing agreement for [redacted] is "[redacted] (formerly known as [redacted]) [redacted]". The advice in this memorandum is subject to post-review in the National Office, which we will expedite. If you have any questions, please call the undersigned at (313) 226-2305, voice mail box #245.

**ISSUE**

What is the appropriate taxpayer name to be used in preparing a proposed closing agreement for the entity formerly known as [redacted]?

**Facts**

[redacted] filed a consolidated return with its numerous subsidiaries for the tax year [redacted]. [redacted] and [redacted] entered into a Combination Agreement which was consummated on [redacted]. As a result of that agreement, [redacted] was merged into [redacted], with [redacted] surviving, and [redacted] shareholders exchanged their [redacted] common stock for [redacted] Ordinary stock. [redacted] will retain the [redacted] stock, with [redacted] becoming, in effect, a subsidiary of [redacted]. On [redacted], the taxpayer filed a

Certificate of Amendment of Certificate of Incorporation with the State of [redacted], to change the name of [redacted] to [redacted]. The existence of [redacted] was not terminated by the Combination Agreement.

**Discussion and Analysis**

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 the tax liability for the consolidated return year." Treas. Reg. § 1.1502-77(a). The common parent remains the agent for the members of the group for any years 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 at any time. Craigie, Inc. v. Commissioner, 84 T.C. 466, 472 (1985); Southern Pacific Co. v. Commissioner, 84 T.C. 395, 401 (1985). Thus, as a general rule, the common parent remains the proper party to execute any closing agreements for any taxable year during which it was the common parent, as long as it remains in existence under state law.

Since the common parent in the present case, [redacted] (formerly [redacted]), remains in existence, [redacted] is still the sole agent for its consolidated group. Thus, [redacted] (formerly [redacted] [redacted] is the name that should be used in preparing the closing agreement for the [redacted] taxable year.

PHOEBE L. NEARING
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Attachments
As Stated.