Office of Chief Counsel
Internal Revenue Service

memorandum

CC:NER:OHI:CIN:TL-N-1279-00
JEBudde

date: March 3, 2000

to: Chief, Appeals Division, Ohio District
Attn: Rick O'Connor

from: District Counsel, Ohio District, Cincinnati

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subject: [redacted]
Consent to Extend Statutes for [redacted], [redacted], and [redacted]

We have reviewed your oral request for advice concerning the above-referenced consent. In our opinion, the consent you obtained in [redacted] is sufficient to extend the statute of limitations to [redacted] for [redacted].

The Appeals office has jurisdiction of the three years [redacted], [redacted], and [redacted]. [redacted] is the common parent of a group of corporations, and the group filed a consolidated federal income tax return for each of the three years currently under Appeals' jurisdiction. For [redacted] and [redacted], the group filed its consolidated tax return using the name "[redacted]". For [redacted], the group filed its tax return using the name "[redacted]".

You and the examination branch timely obtained a series of consents to extend each of the statutes for [redacted], [redacted], and [redacted]. All of those consents identify the taxpayer as "[redacted]". Each of the three series of consents extended the statute until [redacted]. In [redacted], you obtained a single consent that extends the statute for all three of the years [redacted], [redacted], and [redacted], until [redacted]. This most recent consent identifies the taxpayer as "[redacted]" i.e., this consent omits the "[redacted]" part of the name contained on the previous consents and on the [redacted] and [redacted] tax returns. You seek our advice concerning the validity of this consent.

For the reasons stated below, the consent you obtained in [redacted], is sufficient to extend the statute of limitations for the three years under Appeals' jurisdiction until [redacted].

Section 1502 provides that "the Secretary or his delegate shall prescribe such regulations as he may deem necessary in order that the tax liability of any affiliated group of corporations making a consolidated return and of each corporation in the group * * * may be returned * * *." Under this section, the regulations "set forth in elaborate detail how the tax is to be computed in such a return and prescribe the procedure whereby the election of the several corporations is to be manifested." Davis Bros. Restaurant, Inc. v. Commissioner, 60 T.C. 525, 532 (1973).

As a prerequisite to filing a consolidated return, the members of the consolidated group must agree to be bound by the regulations governing consolidated returns. Section 1501 provides:

> The making of a consolidated return shall be upon the condition that all corporations which at any time during the taxable year have been members of the affiliated group consent to all the consolidated return regulations prescribed under section 1502 prior to the last day prescribed by law for the filing of such return. The making of a consolidated return shall be considered as such consent.

By filing a consolidated return, each of the corporations in the group consented to be bound by the consolidated return regulations. Ilfeld Co. v. Hernandez, 292 U.S. 62 (1934). As legislative regulations, those provisions have the force and effect of law unless they are arbitrary. Union Electric Co. of Mo. v. United States, 305 F.2d 850, 854 (Ct. Cl. 1962); Covil Insulation Co. v. Commissioner, 65 T.C. 364, 374 (1975).

Treasury Regulation § 1.1502-77(a), provides that:

> The common parent, for all purposes * * * 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. Except as provided in the preceding sentence, no subsidiary shall have the authority to act for or to represent itself in any such matter.

Treasury Regulation § 1.1502-77(c), titled "Effect of waiver given by common parent" provides that:

> ... an agreement entered into by the common parent extending the time within which an assessment may be made ... shall be applicable - (1) To each corporation which was a member of the group during any part of such taxable year...

In this case, the common parent consented to extend the three statutes until [redacted]. Pursuant to the regulations, these consents are binding on the affiliated subsidiaries whose tax liabilities were reported on the [redacted], and [redacted], consolidated tax returns. While it is preferable for a series of consents to be consistent in identifying the taxpayer, such consistency is not mandated by Treasury Regulation § 1.1502-77 and a lack of consistency, in this case, would not invalidate the consents you obtained in [redacted]. The regulation provides that the common parent may act, in its own name, as agent for all members in the group. We contend that the common parent is doing that, acting in its own name, on behalf of the group.

We could find no case which has answered this specific question. Consequently, our conclusion is based upon our interpretation of the language in the regulation. Furthermore, we understand that the taxpayer is unlikely to sign any additional consents in this matter, even though such consents would be for the same period of time covered by a previously executed consent.

Based on the foregoing authority, we conclude that [redacted] has consented to an extension of the time to assess taxes, not only for itself but for the consolidated group, until [redacted]. If you have any questions about this matter, please contact John E. Budde at (513) 684-3211.

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By: _____
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Senior Attorney

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