Office of Chief Counsel
Internal Revenue Service

memorandum

CC:SER:KYT:NAS:TL-N-2526-00
EFHolman:emm

date: MAY 1 0 2000

to: District Director, Kentucky/Tennessee District
Attn: Chief, Quality Measurement Staff
(Mike Rhoton/Alice Childs)

from: District Counsel, Kentucky-Tennessee District, Nashville

subject: Advisory Opinion: Whether the Receiver appointed by a Tennessee state court is authorized to execute an income tax return for the corporation, when the lone official for the corporation's parent company refuses to file the consolidated return.

DISCLOSURE STATEMENT

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ISSUE

Whether the Receiver appointed by a Tennessee state court is authorized to execute an income tax return for the corporation, when the lone official for the parent company refuses to file the consolidated return.

CONCLUSION

The regulations provide the District Director with the authority to break the agency between the parent corporation and its subsidiaries for tax purposes. Even though the agency relationship is broken, the obligation to file a consolidated return remains. Several issues not discussed here can become involved when such an agency is broken. However, the factors creating those issues apparently are not present here. Under the circumstances of this case, it would be permissible for the operating subsidiary to file to the best of its ability a consolidated return. According to I.R.C. § 6012(b)(3), the income tax return filed on behalf of the subsidiary must be executed by the court-appointed Receiver.

FACTS AND DISCUSSION

Alice Childs of the Quality Measurement Staff communicated to the undersigned the problem encountered by the court-appointed Receiver for a [redacted] company regarding the corporation's tax obligations for its [redacted] and [redacted] taxable years.[1] [redacted] (hereinafter, "the subsidiary") is one of two subsidiaries of [redacted] (hereinafter, "the parent"). The other subsidiary is defunct. The sole owner and lone official of the parent either has made himself unavailable or has refused to execute the consolidated returns for [redacted] and [redacted] that the

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[1] The statement of facts by the [redacted] indicates that [redacted] companies could be involved. Our advice is dependent on the facts presented to our office, i.e., that the consolidated group only consists of the parent ([redacted]), an active subsidiary [redacted], and a defunct subsidiary. Note also the $[redacted] understatement of [redacted] taxes that is [redacted]. Is this the result of an audit, or do we need to conduct an audit of recently filed returns?

Receiver had prepared by a reputable accounting firm. The Receiver seeks assistance in determining what authority, if any, he possesses to execute the returns and have them filed.

After review of several of the regulations pertaining to consolidated returns, and after discussions with Chief Counsel's National Office, we have determined the following. First, once a group of companies elects to file a consolidated return, it is required to file a consolidated return for the subsequent year, absent an election to discontinue such filing. Treas. Reg. § 1.1502-75(a)(2). However, the request to cease the filing of a consolidated return must be made by the parent, who must also demonstrate good cause. Treas. Reg. § 1.1502-75(c)(1)(i). In fact, according to Treasury Regulation § 1.1502-77(a), the 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". Because the Receiver has not been able to obtain the signature of the sole officer of the parent on the consolidated return, and has not been able to obtain that officer's consent to allow the subsidiary to act as agent for the consolidated group, the filing of the consolidated returns at issue has reached an impasse.

Fortunately, the last sentence of Treasury Regulation § 1.1502-77(a) states that, "Notwithstanding the provisions of this paragraph, the District Director may, upon notifying the common parent, deal directly with any member of the group in respect of its liability, in which event such member shall have full authority to act for itself". As a result, we recommend that the District Director send a letter to the sole officer of the parent corporation (at both his personal address, if known, and the last known address of the parent corporation). The letter should inform the officer in his capacity as representative of the parent that, with regard to the tax liabilities of the consolidated group for the [redacted] and [redacted] taxable years, the Director is breaking the agency relationship between the parent and the [redacted] company subsidiary. With regard to those years, the Service will deal directly with the subsidiary as to its consolidated tax liability.

We recommend that a second letter be sent to the Receiver, informing him that, for tax purposes and for the taxable years [redacted] and [redacted] the Director is no longer recognizing the agency relationship of the parent corporation with the [redacted] company subsidiary. (Nothing at this time argues for breaking the parent's agency with regard the defunct subsidiary.) Specifically, the Receiver should be notified that for these taxable years the subsidiary continues to be responsible for the

filing of a consolidated return and to pay any tax reflected thereon. The Receiver should be further informed that, now that the agency relationship is broken, the subsidiary can act for itself in signing a consolidated return. Still, emphasis should be given to the fact that the return would be filed on behalf of the subsidiary, not on behalf of the consolidate group (because the subsidiary continues to lack the authority to act for any other member). Finally, pursuant to I.R.C. § 6012(b)(3), the return filed on behalf of [redacted] must be executed by the Receiver.

Please note that the letters referenced above should state only the matters discussed above, i.e., no explanation for why the agency relationship is being disregarded for these years should be set forth.

If we can be of further assistance in this matter, feel free to contact the undersigned at (615) 250-5466.

JAMES E. KEETON, JR.
District Counsel

/s/ Edsel Ford Holman, Jr.

By: _____
EDSEL FORD HOLMAN, JR.
Senior Attorney

Attachment:
1. Sample letters.
2. Client Survey Sheet.