Office of Chief Counsel
Internal Revenue Service

memorandum

CC:NER:MIC:DET:TL-N-1693-00
ERSkinner

date:

to: David Stacey, Case Manager
Michigan District

from: District Counsel, Michigan District, Detroit

---

subject: Forms 872 Consent to Extend the Statute of Limitations

This memorandum is in response to your request for advice regarding the validity of Forms 872 Consent to Extend the Time to Assess Tax for the tax years [redacted] and [redacted] for [redacted] and [redacted] for [redacted] and [redacted] through [redacted] for [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) 237-6426.

DISCLOSURE STATEMENT

This advice constitutes return information subject to I.R.C. § 6103. This advice contains confidential information subject to attorney-client and deliberative process privileges and if prepared in contemplation of litigation, subject to the attorney work product privilege. Accordingly, the Examination or Appeals recipient of this document may provide it only to those persons whose official tax administration duties with respect to this case require such disclosure. In no event may this document be provided to Examination, Appeals, or other persons beyond those specifically indicated in this statement. This advice may not be disclosed to taxpayers or their representatives.

This advice is not binding on Examination or Appeals and is not a final case determination. Such advice is advisory and does not resolve Service position on an issue or provide the basis for closing a case. The determination of the Service in the case is to be made through the exercise of the independent judgment of the office with jurisdiction over the case.

Issues

I. Whether the attached Forms 872 Consent to Extend Time to Assess Tax for the tax years [redacted] and [redacted] for [redacted] and [redacted] for [redacted] and [redacted] through [redacted] for [redacted] are valid with respect to the name and address of the taxpayer listed on the Form 872.

II. Whether the attached Forms 872 Consent to Extend Time to Assess Tax for the tax years [redacted] and [redacted] for [redacted] and [redacted] for [redacted] and [redacted] through [redacted] for [redacted] are valid in light of I.R.C. Sec. 6501(c)(4)(B) which outlines certain procedures for obtaining consents.

Conclusions

I. The attached Forms 872 Consent to Extend Time to Assess Tax for the tax years [redacted] and [redacted] for [redacted] and [redacted] for [redacted] and [redacted] through [redacted] for [redacted] are valid with respect to the name and address of the taxpayer listed on the Form 872.

II. The attached Forms 872 Consent to Extend Time to Assess Tax for the tax years [redacted] and [redacted] for [redacted] and [redacted] for [redacted] and [redacted] through [redacted] for [redacted] are valid in light of I.R.C. § 6501(c)(4)(B) which outlines certain procedures for obtaining consents.

Facts

The Michigan District Examination Division is currently conducting an audit of the [redacted] through [redacted] tax years of [redacted]. Forms 872 Consent to Extend Time to Assess Tax have been secured on a regular basis from the taxpayers during the course of the audit cycle. The most recent Forms 872, which are the subject of this advice request were executed on [redacted] and extend the time to assess tax for the taxpayers' [redacted] through [redacted] tax years to [redacted]. The names for the

taxpayers: [redacted] for [redacted] and [redacted] [redacted] for [redacted] and [redacted] and [redacted] for [redacted] through [redacted] are identical to the names used on all prior consents and identical to the names appearing on the federal tax returns for the respective years.

All taxpayers remain in existence. [redacted] has remained unchanged in all respects since [redacted] and [redacted] changed its name from [redacted] n [redacted] and the consolidated group remains in existence in that the common parent, [redacted] currently remains as the common parent and one or more subsidiaries affiliated with it at the end of each respective tax year [redacted] currently remains affiliated with it. The taxpayers requested the address be changed as shown on the current consents which were solicited in early [redacted] and executed on [redacted].

Discussion

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. See, 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. Thus, generally the common parent is the proper party to sign consents, including Forms 872, for all members of the group. Id. Where the common parent remains in existence, even if it is no longer the common parent, it remains the agent for the group with regard to years in which it was the common parent of the group. See, Southern Pacific Co. v. Commissioner, 84 T.C. 395, 401 (1985).

Treasury Regulation § 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. Treasury Regulation § 1.1502-75(d) provides that a [consolidated] group remains in existence for a tax year if the common parent remains as the common parent and at least one subsidiary that was affiliated with it at the end of the prior year remains affiliated with it at the beginning of the year, whether or not one or more corporations have ceased to be subsidiaries at any time after the group was formed.

In the present case, the common parent of the consolidated group, [redacted] remains in existence as defined in Treas. Reg. § 1.1502-75(d) and the consents have been properly executed. Similarly, the [redacted] continues in existence and its consents have also been properly

executed. [redacted] the signatory for the taxpayers on all consents at issue is the chief tax officer for all entities and duly authorized to sign the Forms 872. The address change used in the current consents was authorized and requested by the taxpayer and poses no impediment to the validity of the consents.

I.R.C. Sec. 6501(c)(4)(B) as enacted by Section 3461(b) of the IRS Restructuring and Reform Act of 1998 applies to requests to extend the period of limitations made after December 31, 1999. Since the consents at issue were requested in early [redacted] the revised procedures related to securing Forms 872 are inapplicable to the consents at issue.

Should you have any questions or concerns regarding this matter, please contact the undersigned attorney at (313) 237-6426.

PHOEBE L. NEARING
District Counsel

By: _____
ERIC R. SKINNER
Attorney