Office of Chief Counsel
Internal Revenue Service

memorandum

CC:NER:MAN:TL-N-3438-99
PLDarcy

date:

to: District Director, Manhattan
Examination Division
Attn: Mr. Vincent Lorio

from: District Counsel, Manhattan

subject: [redacted]
Tax year [redacted]
Consent to Extend the Statute of Limitations On Assessment

Uniform Issue List # 6501.08-00; 6501.08-17

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This memorandum is in response to your request for advice concerning the proper entity to execute a consent to extend the statute of limitations on assessment, Internal Revenue Service Form 872, for the [redacted] with respect to [redacted]'s [redacted] taxable year [redacted] and the proper language to use in such a consent. You also asked our advice on the proper party to pay proposed liabilities stemming from [redacted]'s [redacted] taxable year.

ISSUES

1. What is the proper entity to enter into a consent to extend the statute of limitations on assessment, Internal Revenue Service Form 872, for the [redacted] taxable year of [redacted]?

2. What is the proper language to be used in the consent to extend the statue of limitations, Internal Revenue Service Form 872.

3. Since [redacted] no longer owns a checking account, can the Internal Revenue Service accept payment of proposed liabilities for its [redacted] taxable year from [redacted], [redacted]'s parent.

FACTS:

The Examination Division is currently auditing [redacted] taxable year of [redacted]. During [redacted], [redacted] was the common parent of a consolidated group of domestic corporations. Sometime after the end of [redacted]'s [redacted] tax year, [redacted] acquired [redacted]. [redacted] now owns [redacted]% of the outstanding stock of [redacted]. [redacted] currently retains the same employee identification number it had during its [redacted] taxable year.

[redacted] has agreed to extend the statute of limitations on assessment of [redacted]'s [redacted] taxable year. [redacted] has also agreed to tender payment of proposed tax liabilities for [redacted]'s [redacted] taxable year.

I and II. Extending the Statute of Limitations on Assessment of [redacted]'s [redacted] tax year.

In the case of a consolidated group, we can find guidance as to the appropriate entity to enter into a consent to extend the statute of limitations in the consolidated return regulations. Treas. Regs. § 1.1502-1 et seq. Pursuant to the consolidated return regulations, the common parent is the sole agent for each member of the group, duly authorized to act in its own name in all matters relating to the income tax liability for the consolidated return year. Treas. Reg. § 1.1502-77(a). The common parent in its name can give waivers and any waiver so given shall be considered as having been given or executed by each such subsidiary. Treas. Reg. § 1.1502-77(a). An agreement entered by the common parent to extend the time within which to assess an income tax deficiency for the consolidated return year binds each member of the consolidated group during any part of such taxable year. Treas. Reg. § 1.1502-77(c).

The common parent remains the agent for the members of the group for any year 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. See Treas. Reg. § 1.1502-77(a); Southern Pacific v. Commissioner, 84 T.C. 395, 401 (1985). Accordingly, as a general rule, the common parent remains the proper party to extend the statute of limitations for any taxable year for which it was the common parent, as long as it remains in existence.

Accordingly, [redacted] is the proper entity to extend the statute of limitations for itself and the remaining corporate members of the former consolidated group during [redacted]. In this case, the Internal Revenue Service Form 872 should read as follows:

"[redacted] (E.I.N. *****)*"

In addition, at the bottom of the page, you should add the following language:

"*This is with respect to the consolidated tax liability of [redacted] (E.I.N. *****) for the taxable year [redacted].

III. The Payment of [redacted]'s [redacted] Tax Liability.

Pursuant to I.R.C. § 1503(a) "in any case in which a consolidated return is filed or required to be filed, the tax shall be determined, computed, assessed, collected, and adjusted in accordance with the regulations prescribed under section 1502 promulgated prior to the last date prescribed by law for the filing of such return." We can find nothing in the consolidated return regulations, Treas. Regs. § 1.1502-1 et seq, that would prohibit [redacted] from paying [redacted]'s [redacted] Federal tax liability. Therefore, we find no problem with accepting payment from [redacted] for [redacted]'s [redacted] Federal tax liability.

Should you have any questions regarding this matter, please contact Paul Darcy of our office at (212) 264-5473 ext. 256.

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