Office of Chief Counsel
Internal Revenue Service

memorandum

CC:WR:NCA:SF:TL-N-2166-99
MTRobus

date: JUN 24 1999

to: District Director, Northern California District
Attn: Charlene Louie, Revenue Agent, Group 1122, Exam Br. I

from: District Counsel, Northern California District, San Francisco

subject: [redacted]
EIN: [redacted] - Years: FY [redacted] and [redacted]

On May 17, 1999, we provided you with advice regarding the proper party to extend the limitations period for the above-entitled taxpayer. Our National Office, which was sent a copy of that advice for post-review, has advised us that they are in agreement with the advice rendered therein. Our National Office did, however, recommend that we include a reference to §§ 1.1502-77T(a)(1) & (a)(4)(i), which clearly indicate that the old common parent of a group is an alternative agent for the group in situations such as this one. Our National Office commented further that the entity named on the second page of Form 872 should be [redacted], a current officer of [redacted] should sign under that name, and the EIN on the front page of Form 872 should be that of [redacted].

Please contact the undersigned at (415) 744-9217 if you have any questions.

WILLIAM K. SHIPLEY
Acting District Counsel

By: Marion T. Robus
MARION T. ROBUS
Attorney

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Attn: Charlene Louie, Revenue Agent, Group 1122, Exam Br. I

from: District Counsel, Northern California District, San Francisco

subject: [redacted]
EIN: [redacted] - Years: FY [redacted] and [redacted]

This is in response to your memo dated March 29, 1999, requesting advice on the proper party to extend the limitations period discussed below.

ISSUES

1. Is there a statute problem with the consents as secured for [redacted] and [redacted]?

2. How should the consents for this taxpayer be worded in the future?

3. Are other documents required or desirable at this time to supplement the consents we already have (e.g., Form 2045, Transferee Liability)?

4. If future consents for FY [redacted] are different in format (i.e., name of taxpayer, EIN, and any supplemental wording or documents), will it affect our legal standing on the issue should the taxpayer challenge the validity of the earlier consents?

CONCLUSIONS

1. There is no statute problem with the consents as secured for [redacted] and [redacted]. [redacted] is the proper party to extend the limitations period and to receive notices of deficiency for the group's [redacted], [redacted], [redacted], and [redacted] taxable years because it was the common parent during those years and is still in existence.

2. The name of the taxpayer on the consent should be the same name as shown on the tax return. You have secured consents

for both [redacted] and [redacted] in the name of "[redacted]" which is the name shown on the [redacted] return. Since the [redacted] return was filed in the name of "[redacted]" that name should be on future consents secured for [redacted]. We do not see any problem, however, with the [redacted] consent as secured.

3. Transferee liability consent forms are not required at this time.

4. If future consents for FY [redacted] differ because of subsequent circumstances, e.g., a change in the taxpayer's name or EIN, such change will not affect the validity of the consents which were secured previously.

FACTS

Briefly, [redacted], a Nevada Corporation, was the common parent of a consolidated group filing returns on a calendar year basis. It filed consolidated returns for the group's [redacted], [redacted], [redacted] and [redacted] taxable years. Pursuant to an agreement and plan to merger, [redacted], a Nevada corporation and a wholly-owned subsidiary of [redacted], a Delaware Corporation, merged with and into [redacted] and the separate corporate existence of [redacted] ceased. The transaction was structured to qualify under I.R.C. §368(a)(1)(B). All of [redacted]'s stock was acquired by [redacted] on [redacted]. The stockholders of [redacted] received stock of [redacted] in the transaction. The purpose of the reorganization was for the acquiring corporation to acquire the assets of [redacted].

DISCUSSION

Because the common parent of the consolidated group is still in existence, it is the proper party to extend the limitations period on assessment and to receive the notice of deficiency for the group's [redacted], [redacted], [redacted] and [redacted] years. Treas. Reg. § 1.1502-77(a); Craigie, Inc. v. Commissioner, 84 T.C. 466 (1985). This is so even though [redacted] is no longer the common parent.

The notice of deficiency issued to [redacted] should include the names of all members of the group during any portion of the group's [redacted], [redacted], [redacted] and [redacted] taxable years. See Treas. Reg. § 1.1502-77(a).

Transferee liability arises only when the merged corporation goes out of existence and the surviving corporation takes over

the liabilities of the dissolved corporation. Potential transferee liability may also arise if there is a transfer of assets without consideration. Here there is no transferee liability, since [redacted] is still in existence, and there was an exchange of stock for stock, presumably in an arms-length transaction.

Please contact the undersigned at (415) 744-9217 if you have any questions. Thank you for your assistance.

WILLIAM K. SHIPLEY
Acting District Counsel

By: Marion T. Robus
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cc: Office of Assistant Chief Counsel
(Field Service) (CC:DOM:FS)