Office of Chief Counsel
Internal Revenue Service

memorandum

CC:MSR:KSM:KCY:TL-N-1875-99
MLBoman

date: MAY 24 1999

to: Chief, Examination Division, Kansas-Missouri District
Attention: Dave Moser, District Technical Coordinator

from: Associate District Counsel, Kansas-Missouri District, Kansas City

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subject: [redacted]
CEP Taxpayer
Effect of "F" Reorganization

As you know, our memorandum of April 22, 1999, has been postreviewed by the National Office. They have expressed some concerns that the reorganization may not have qualified under I.R.C. § 368(a)(1)(F). This issue, however, has not yet been examined, and a determination on that issue is premature.

The National Office has suggested revised language for describing the taxpayer in any consents. That language is as follows:

> [redacted] (E.I.N. [redacted] (formerly known as [redacted]), a Delaware Corporation, in its own name and alternatively as successor in interest by merger to [redacted] (E.I.N. [redacted]), an [redacted] Corporation.

The National Office has further advised with respect to the signing of the consents:

> The Form 872 should be signed by a current officer of new [redacted]. Under the officer's name, you should type in his or her title and the corporation's name - [redacted] (E.I.N. [redacted]) (formerly known as [redacted].

No further action is currently required of this office, and we are closing our file. If you have any questions, please contact Michael L. Boman at (816) 283-3046, extension 107.

(signed) Michael L. Boman

MICHAEL L. BOMAN
Senior Attorney

cc: Mary E. Johnson

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Internal Revenue Service

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Effect of "F" Reorganization

This is in response to your memorandum dated February 10, 1999,[1] requesting advice on the effect of an alleged "F" reorganization. Specifically, you ask:

(1) Should the new corporation have obtained a different E.I.N. or was it correct in utilizing the same E.I.N. as used before the transaction?

(2) Should any modifications be made to signatures on consents to extend the statute of limitations of waivers of restrictions on assessments?

FACTS

The facts as we understand them from your memorandum are as follows:

[redacted] was incorporated in the state of [redacted], in [redacted]. Its E.I.N. is [redacted]. [redacted] has been on a [redacted] week fiscal year ending in [redacted]. It filed a voluntary petition for reorganization under chapter 11 of the Bankruptcy Code on [redacted].

[redacted] was incorporated in Delaware on [redacted]. It did not issue stock, did not acquire an E.I.N. and did not file any return.

On [redacted], the plan of reorganization of [redacted], [redacted] was confirmed. Debtor's plan of reorganization

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[1]Received in this office on March 15, 1999.

provided for reincorporation in Delaware and issuance of additional shares to meet its obligations under the bankruptcy plan of reorganization.

On [redacted], [redacted] (the new Delaware Corporation) changed its name to [redacted] (the same name as used by the existing [redacted] corporation). On [redacted] the [redacted] corporation merged into the Delaware Corporation.

On [redacted], [redacted] filed its return for the fiscal year ending [redacted]. It utilized the same E.I.N. as historically used. All subsequent filings have also continued the name of the taxpayer and E.I.N. with no indication that there has been a merger or that the new corporation is a successor in interest.

Taxpayer contends that the reorganization is a qualified "F" reorganization. You have not audited this issue, but have requested our advice assuming that it does qualify.

Legal Analysis

Under section 368(a)(1)(F), the "F" reorganization is "a mere change in identity, form, or place of organization of one corporation, however effected." The formal use of two corporations does not necessarily rule out an "F" reorganization, as long as there is a single operating corporation. As stated in the explanations at 6 Standard Federal Tax Reporter (CCH) ¶ 16753.071 (1999):

> An "F" reorganization includes a mere change in identity, for, or place of organization of a single operating corporation. Although an "F" reorganization is limited to a single operating corporation, such limitation does not preclude the use of more than one entity to consummate a transaction involving a change of identity, for, or place of operation, provided that only one operating company in involved. (Conference Committee Report, P.L. 97-248). For example, the reincorporation of an operating company in a different state is an "F" reorganization that requires more than one corporation be involved.

See also Rev. Rul. 96-29, 1996-1 C.B. 50, wherein it was held that a merger of a corporation into a corporation in another state qualified as an "F" reorganization, as long as there was

only one operating company and even though the reorganization was a step in a larger transaction.[2]

Under section 381(b), "F" reorganizations are excluded from the general rules ending the taxable year of the transferor corporation. Treas. Reg. § 1.381(b)-1(a)(2) provides further:

> *Reorganizations under section 368(a)(1)(F).* In the case of a reorganization qualifying under section 369(a)(1)(F) (whether or not such reorganization also qualifies under any other provision of section 368(a)(1)), the acquiring corporation shall be treated (for purposes of section 381) just as the transferor corporation would have been treated if there had been no reorganization. Thus, the taxable year of the transferor corporation shall not end on the date of transfer merely because of the transfer; a net operating loss of the acquiring corporation for any taxable year ending after the date of transfer shall be carried back in accordance with section 172(b) in computing the taxable income of the transfereor corporation for a taxable year ending before the date of transfer; and the tax attributes of the transferor corporation enumerated in section 381(c) shall be taken into account by the acquiring corporation as if there had been no reorganization.

As the Service stated in Rev. Rul. 96-29, 196-1 C.B. 50:

> The rules applicable to corporate reorganizations as well as other provisions recognize the unique characteristics of reorganizations qualifying under § 368(a)(1)(F). In contrast to other types of reorganizations, which can involve two or more operating corporations, a reorganization of a corporation under § 368(a)(1)(F) is treated for most purposes of the Code as if there had been no change in the corporation and, thus, as if the reorganized corporation is the same entity as the corporation that was in existence prior to the reorganization.

With respect to your first question, i.e. whether taxpayer should have obtained a new E.I.N., the answer is specifically covered by Rev. Rul. 73-526, 1973-2 C.B. 404. Since the new corporation is treated for federal income tax purposes as the

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[2]We do not intend to prejudge whether the transaction in fact qualified as an "F" reorganization.

same corporation, the new corporation should continue to use the same E.I.N.

With respect to your second question, we believe that no modification of the name is necessary. The new corporation is treated as "the same corporation" for federal income tax purposes. It has the same name, the same E.I.N., the same tax attributes. Assuming a valid "F" reorganization in this case, it is the same corporation, but has simply changed its state of incorporation. This is consistent with KSMO 45-01, Attachment 1, page 6 (Revised 02/23/1999) that provides specific language in the case of "A", "B", "C", and "D" reorganizations, but has no specific provision for the "F" reorganization.

Since no further action is required, we are closing our file. Questions may be directed to Michael L. Boman at (816) 283-3046, extension 107.

(signed) Michael L. Boman

MICHAEL L. BOMAN
Senior Attorney