



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
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INTERNAL REVENUE SERVICE NATIONAL OFFICE FIELD SERVICE ADVICE

MEMORANDUM FOR JOHN P.JANKOWSKI
SPECIAL LITIGATION ASSISTANT CC:LM:RFP:CHI:2

FROM: Jasper L. Cummings, Jr.
Associate Chief Counsel (Corporate) CC:CORP

SUBJECT:

This Field Service Advice responds to your memorandum dated February 13, 2000. Field Service Advice is not binding on Examination or Appeals and is not a final case determination. This document is not to be used or cited as precedent.

DISCLOSURE STATEMENT

Field Service Advice is Chief Counsel Advice and is open to public inspection pursuant to the provisions of section 6110(i). The provisions of section 6110 require the Service to remove taxpayer identifying information and provide the taxpayer with notice of intention to disclose before it is made available for public inspection. Sec. 6110(c) and (i). Section 6110(i)(3)(B) also authorizes the Service to delete information from Field Service Advice that is protected from disclosure under 5 U.S.C. § 552 (b) and (c) before the document is provided to the taxpayer with notice of intention to disclose. Only the National Office function issuing the Field Service Advice is authorized to make such deletions and to make the redacted document available for public inspection. **Accordingly, the Examination, Appeals, or Counsel recipient of this document may not provide a copy of this unredacted document to the taxpayer or their representative.** The recipient of this document may share this unredacted document only with those persons whose official tax administration duties with respect to the case and the issues discussed in the document require inspection or disclosure of the Field Service Advice.

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LEGEND

Year 1 =

Year 2 =

Year 3 =

Year 4 =

Year 5 =

Year 6 =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Parent =

Parent's Former Name =

Parent's New Name =

Merger Sub =

Foreign Parent =

Foreign Parent's
former name =Foreign Parent's
new name =
Corporation X =

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Intermediate =

State A =

a =

ISSUES

- 1) In light of Parent's Date 4 restructuring, what corporate entity is the proper party to extend the statute of limitations for the taxable years Year 4, Year 5, and Year 6?
- 2) In light of Parent's Date 4 restructuring, what corporate entity is the proper party to extend the statute of limitations for the taxable years Year 1, Year 2, and Year 3?
- 3) Whether under the relevant facts and circumstances, it is advisable or necessary for the Service to solicit a separate Form 872 from Intermediate, as alternative agent under Temp. Treas. Reg. § 1.1502-77T(a)(4), for the members of the Parent consolidated group?

CONCLUSIONS

- 1) Parent is the proper party to execute Forms 872 (Consent to Extend the Time to Assess Tax) for the Parent and subsidiaries consolidated group for the taxable years Year 4, Year 5, and Year 6. The following language and format should be used for the Form(s) 872 for Year 4 and/or Year 5: "Parent's New Name (EIN: XX-XXXXXXX), formerly Parent's Former Name, and Subsidiaries.*" Following an asterisk at the bottom of page 1 of Form 872, state: "With respect to the consolidated tax liability of Parent's Former Name and Subsidiary Companies for [the year or years being extended]." The following language and format should be used for Year 6: "Parent's New Name (EIN: XX-XXXXXXX) and Subsidiaries.*" Following an asterisk at the bottom of page 1 of Form 872, state: "With respect to the consolidated tax liability of Parent's New Name and Subsidiary Companies for Year 6."
- 2) Parent is the proper party to execute Forms 872 (Consent to Extend the Time to Assess Tax) for the Parent and subsidiaries consolidated group for the taxable years Year 1, Year 2 and Year 3. The following language and

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format should be used for the Form(s) 872 for Year 1, Year 2, and/or Year 3: "Parent's New Name (EIN: XX-XXXXXXX), formerly Parent's Former Name, and Subsidiaries.*" Following an asterisk at the bottom of page 1 of Form 872, state: "With respect to the consolidated tax liability of Parent's Former Name and Subsidiary Companies for [the year or years being extended]."

- 3) It is neither necessary nor advisable for the Service to solicit a separate Form 872 from Intermediate, as alternative agent under Temp. Treas. Reg. § 1.1502-77T(a)(4), for the members of the Parent consolidated group.

FACTS

Until the Date 4 Restructuring discussed below, Parent was the common parent of an affiliated group of corporations filing consolidated federal income tax returns. On or about Date 1, Parent and Foreign Parent entered into an Agreement and Plan of Merger (the "Agreement"). Pursuant to the Agreement, Foreign Parent formed Merger Sub. On Date 2, pursuant to the Agreement, Parent and Merger Sub merged under State A law, with Parent surviving (the "Merger"). Parent therefore became a wholly-owned subsidiary of Foreign Parent. Simultaneously with the Merger, Parent changed its name from Parent's Former Name to Parent's New Name and Foreign Parent changed its name from Foreign Parent's Former Name to Foreign Parent's New Name.

Prior to Date 3, Foreign Parent had acquired approximately a% of the stock of Corporation X, the common parent of an affiliated group filing consolidated federal income tax returns. On or about Date 3, Foreign Parent transferred its stock in Corporation X to Intermediate, a wholly-owned domestic subsidiary of Foreign Parent, in exchange for additional stock in Intermediate (the "Date 3 Restructuring"). The Date 3 Restructuring constituted a "reverse acquisition" under Treas. Reg. § 1.1502-75(d)(3) and consequently resulted in the termination of the Intermediate consolidated group. The Corporation X consolidated group survived the transaction with Intermediate becoming the new common parent of that group.

On or about Date 4 (the day following Date 3) Foreign Parent transferred its stock in Parent to Intermediate in exchange for additional stock in Intermediate (the "Date 4 Restructuring"). The Date 4 Restructuring constituted a "reverse acquisition" under Treas. Reg. § 1.1502-75(d)(3) and consequently, resulted in the termination of the Corporation X consolidated group. The Parent consolidated group survived the transaction with Intermediate becoming the new common parent of that group.

The Service obtained Forms 872 covering various periods. For Year 1, Year 2, and Year 3, the Service obtained Forms 872 executed by Parent and also forms 872

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executed by Intermediate as alternate agent. For Year 4 and Year 5 the Service obtained Forms 872 executed by Parent, in the name "Parent's New Name, formerly Parent's Former Name." For Year 6, the Service obtained a Form 872 executed by Parent, in the name "Parent's New Name."

LAW AND ANALYSIS

Where the common parent remains in existence, even if it no longer is the common parent, it remains the agent for the group with regard to years for which it was the common parent of the group. Treas. Reg. §§ 1.1502-77(a); 1.1502-77T(a)(4)(i). Here, prior to the Date 4 Restructuring, Parent was the common parent of the Parent and subsidiaries consolidated group. That is, Parent was the common parent of the Parent and subsidiaries consolidated group for Year 1, Year 2, Year 3, Year 4, Year 5, and Year 6. Parent remained in existence following the Date 4 Restructuring although it ceased to be the common parent of the consolidated group of which it is a member. Parent therefore is a proper party to sign an extension of the statute of limitations with respect to Year 1, Year 2, Year 3, Year 4, Year 5, and Year 6.

As we understand the facts of the case, there is no appreciable uncertainty as to whether Parent remains a viable and legal entity under State A law. Therefore, it is unnecessary and inadvisable to solicit Forms 872 from Intermediate, as alternative agent under Temp. Treas. Reg. § 1.1502-77T(a)(4), for the members of the Parent consolidated group.

Please call if you have any further questions.

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