



OFFICE OF
CHIEF COUNSEL

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224
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INTERNAL REVENUE SERVICE NATIONAL OFFICE FIELD SERVICE ADVICE

MEMORANDUM FOR

SPECIAL LITIGATION ASSISTANT CC:

FROM: Steven J. Hankin
Chief, Corporate Branch, Field Service Division
CC:DOM:FS:CORP

SUBJECT:

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

LEGEND:

Corp A =
Corp B =
Corp C =

Corp D =
taxable year A =
taxable year B =
taxable year C =
taxable year D =
taxable year E =
taxable year F =
taxable year G =
Date A =
Date B =

Date C =
Date D =
Date E =
Date F =
X =
Y =
Z =

ISSUE(S):

1. Who is the proper party to execute Form(s) 906 for the former Corp A & Subsidiaries consolidated group for taxable years C and D?
 - 1a. What is proper language to use on the Form(s) 906 for the Corp A & Subsidiaries consolidated group's taxable years C and D?
2. Who is the proper party to execute Form(s) 906 for the former Corp B & Subsidiaries consolidated group for the taxable years B through C and the short D tax year?
 - 2a. What is proper language to use on the Form(s) 906 for the former Corp B & Subsidiaries consolidated group for the taxable years B through C and the short D tax year?
3. Who is the proper party to execute Form(s) 906 for the Corp C & Subsidiaries consolidated group for the taxable year D?
 - 3a. What is proper language to use on the Form(s) 906 for the Corp C & Subsidiaries consolidated group for the taxable year D?

CONCLUSION:

1. Corp D is the proper party to execute Form(s) 906 with regard to Corp A's several liability for the consolidated tax of the former Corp A & Subsidiaries consolidated group for taxable years C and D.
 - 1a. Identify the taxpayer on the Form(s) 906 as "Corp D, as successor to Corp C (EIN: XX-XXXXXXX) (formerly Corp B), as the successor of Corp A (EIN: XX-XXXXXXX)", and put an asterisk after it. At the bottom of the Form 906, write, "*This is with respect to the several liability of Corp A (EIN: XX-XXXXXXX) for the consolidated tax of the Corp A (EIN: XX-XXXXXXX) and Subsidiaries consolidated group for the taxable years C and D."

2. Corp D is the proper party to execute Form(s) 906 with regard to Corp B's several liability for the consolidated tax of the former Corp B & Subsidiaries consolidated group for the taxable years B through C and the short D tax year.

2a. Identify the taxpayer on the Form(s) 906 as "Corp D (EIN: XX-XXXXXXX), as successor to Corp C (EIN: XX-XXXXXXX), formerly Corp B (EIN: XX-XXXXXXX)", and put an asterisk after it. On the bottom of the Form 906, write, "**This is with respect to the several liability of Corp B (EIN: XX-XXXXXXX) for the consolidated tax of Corp B (EIN: XX-XXXXXXX) and Subsidiaries consolidated group for the taxable years B through C and the short D taxable year."

3. Corp D is the proper party to execute Form(s) 906 with regard to Corp C's several liability for the consolidated tax of the former Corp C & Subsidiaries consolidated group for the tax year D.

3a. Identify the taxpayer on the Form 906 as "Corp D, as successor to Corp C (EIN: XX-XXXXXXX)" and put an asterisk after it. On the bottom of the Form 906, write, "**This is with respect to the several liability of Corp C (EIN: XX-XXXXXXX) for the consolidated tax of the Corp C (EIN: XX-XXXXXXX) and Subsidiaries consolidated group for the taxable year D."

Instead of several Forms 906 (as envisioned above), you can use one Form 906 **for Corp D with respect to its liability**. You can identify the taxpayer on this Form 906 as follows:

Corp D (EIN: XX-XXXXXXX), as successor in interest to Corp C (EIN: XX-XXXXXXX), formerly Corp B (EIN: XX-XXXXXXX), successor in interest to Corp A, with respect to the several liabilities of: (1) Corp A (EIN: XX-XXXXXXX) for the consolidated tax of the Corp A (EIN: XX-XXXXXXX) and Subsidiaries consolidated group for the taxable years C and D; (2) Corp C (EIN: XX-XXXXXXX), formerly Corp B (EIN: XX-XXXXXXX) for the consolidated tax of the Corp B (EIN: XX-XXXXXXX) and Subsidiaries consolidated group for the taxable years B through C and the short taxable year D; and (3) Corp C (EIN: XX-XXXXXXX) for the consolidated tax of the Corp C (EIN: XX-XXXXXXX) and Subsidiaries consolidated group for the taxable year D.

FACTS:

Corp A and Corp B were common parent agents for separate consolidated groups of affiliated corporations. On or about Date A, Corp A merged into Corp B, with Corp B surviving. As a result of the merger, Corp B changed its name to Corp C.

Corp C has represented to the Service that this merger qualified as a tax-free reorganization under I.R.C. § 368(a)(1)(A).

Notwithstanding the form of the transaction, District Counsel indicates that the shareholders of old Corp A owned X percent of the stock of Corp C immediately after the merger. As a result, this transaction appears to constitute a reverse acquisition and, therefore, the Corp A and Subsidiaries consolidated group is treated as the continuing group with Corp C as the common parent of the continuing group. Also as a result of this transaction, Corp B & Subsidiaries consolidated group terminated.

On Date B, Corp C merged into Corp D (EIN: XX-XXXXXXX), with Corp D surviving. Following the merger, the former shareholders of Corp D control Y% of Corp D and the remaining Z% is owned by the former shareholders of Corp C. This transaction does not appear to constitute a reverse transaction and, therefore, this merger resulted in the termination of the Corp A and Subsidiaries consolidated group.

Prior to the merger of Corp A into Corp B, Corp B filed consolidated returns for the Corp B and Subsidiaries consolidated group for tax year C and short taxable year D. Consolidated returns were filed on behalf of the Corp A and Subsidiaries consolidated group for taxable years ended C and D. Prior to the merger of Corp C into Corp D, Corp C (formerly Corp B) filed consolidated returns for the Corp C and Subsidiaries consolidated group for taxable years ending after taxable year C.

On Date C, we responded to you informally with respect to the above stated issues. Our advice was as follows:

Regarding the taxable year C and short year D consolidated tax liability of the Corp B consolidated group

Corp D, as successor to Corp C (EIN: XX-XXXXXXX), formerly Corp B (EIN: XX-XXXXXXX).*

*This is with respect to the several liability of Corp B (EIN: XX-XXXXXXX) for the consolidated tax liabilities of Corp B (EIN: XX-XXXXXXX) and Subsidiaries consolidated group for the taxable years ended C and the short taxable year ended Date A.

Regarding the taxable years E, F and short year G consolidated tax liability of Corp C consolidated group

Corp D, as successor to Corp C (EIN: XX-XXXXXXX).*

*This is with respect to the several liability of Corp C (EIN: XX-XXXXXXX) for the consolidated tax liabilities of the Corp C (EIN: XX-

XXXXXXX) and Subsidiaries consolidated group for the taxable years ended after taxable year C.

Regarding the taxable years C and D consolidated tax liability of the Corp A consolidated group

Corp D, as successor to Corp C (EIN: XX-XXXXXXX), as the successor of Corp A (EIN: XX-XXXXXXX).*

*This is with respect to the several liability of Corp A (EIN: XX-XXXXXXX) for the consolidated tax liabilities of Corp A (EIN: XX-XXXXXXX) and Subsidiaries consolidated group for the taxable years ended C and D.

There are three options regarding the several liabilities of the surviving members of the consolidated groups:

Initially, we note that the agency rules of Temp. Reg. § 1.1502-77T are inapplicable with respect to Forms 906. Therefore, we propose you do one of the following:

1. Deal with each member individually regarding the Form 906, Closing Agreement;
2. Have all members designate an agent to act on their behalf according to Reg. § 1.1502-77(d);
3. Have all members sign one or several Forms 906, **analogous to** the procedure set forth in Rev. Proc. 72-38, 1972-2 C.B. 813, as modified by Rev. Proc. 82-6, 1982-1 C.B. 409 (governing certain procedures for filing Forms 872, 872-B, and SS-10).

By memorandum, dated Date D, you informed us that the former consolidated members of the three consolidated groups intended to formally designate "Corp D" as their agent. You also stated that this designation will be formally ratified by the former surviving members of Corp C and Subsidiaries consolidated group, Corp A and Subsidiaries consolidated group, and Corp B and Subsidiaries consolidated group on or before Date E. You also submitted to us the proposed taxpayer identification language that you intended to put on the Form 906. That language is set forth below:

Corp D (EIN: XX-XXXXXXX), as successor to Corp C (EIN: XX-XXXXXXX), formerly Corp B (EIN: XX-XXXXXXX), (hereinafter "Taxpayer"), [address], with respect to the several liability of Corp C (EIN: XX-XXXXXXX), as successor to Corp A (EIN: XX-XXXXXXX), and Corp A (EIN: XX-XXXXXXX) for the several consolidated tax liabilities of the Corp A (EIN: XX-XXXXXXX) and Subsidiaries consolidated group for the taxable years C and D; with respect to the

several liability of Corp C (EIN: XX-XXXXXXX), formerly Corp B (EIN: XX-XXXXXXX) for the several consolidated tax liabilities of the Corp B (EIN: XX-XXXXXXX) and Subsidiaries consolidated group for the taxable years B through C and the short taxable year ended Date A; with respect to the several liability of Corp C (EIN: XX-XXXXXXX) for the several consolidated tax liabilities of the Corp C (EIN: XX-XXXXXXX) and Subsidiaries consolidated group for the taxable year D; and as the designated agent, under Treas. Reg. § 1.1502-77(d), for the several consolidated tax liabilities of the surviving consolidated group members of each consolidated group listed in Attachment 1.

We note that this language modifies the proposed language contained in our advice of Date C. We think you are attempting too much here. Although we advise that you deal with them separately, we think it is permissible to use one combined Form 906 for all the surviving members of each subject consolidated group with regard to the tax years at issue for each group. See analogous procedures set forth in Rev. Proc. 72-38, 1972-2 C.B. 813, as modified by Rev. Proc. 82-6, 1982-1 C.B. 409, (governing certain procedures for filing Forms 872, 872-B, and SS-10). We urge you to use at least four Forms 906, one for Corp D with regard to its entire liability, and one for each consolidated group at issue (*i.e.*, one for Corp A and Subsidiaries consolidated group, one for Corp B and Subsidiaries consolidated group, and one for Corp C and Subsidiaries consolidated group).¹ Further, we do not believe that a Form 906 can be obtained from Corp D as the agent for any of the surviving members of these consolidated groups. Do not use “agency” language on the Form 906.²

¹It is possible to use one combined Form 906 for all surviving members of both the Corp A and Subsidiaries consolidated group and the Corp C and Subsidiaries consolidated group with regard to their respective consolidated tax liabilities because the first merger constituted a reverse acquisition and therefore the Corp A and Subsidiaries consolidated group continued in existence, with Corp C as its new common parent. However, we believe in the interest of clarity that you should obtain separate Forms 906 with regard to Corp A and Subsidiaries consolidated group and the Corp C and Subsidiaries group.

² Treas. Reg. § 1.1502-77(d), in relevant part, provides, “If the notice thus required is not given by the common parent, or the designation is not approved by the district director, the remaining members may, subject to the approval of such district director, designate **another member** to act as agent.” (Emphasis added). We interpret this language to mean that only another corporation that was a surviving “member” of the consolidated group during the years at issue can be designated under this regulation. Corp D was not a “member” of any of the subject consolidated groups

On Date F, you informed us that, because of insufficient time and resources, it was impracticable to get the former consolidated members of the three consolidated groups to formally designate "Corp D" as their agent. You then proposed to have 5 individuals (officers of the various taxpayers, who in the aggregate have authority to sign for all taxpayers concerned) sign one Form 906. You state that you intend that they sign (one time). You will attach various affiliation schedules, which will list the official positions in the various taxpayers held by these five individuals. You stated that you are presently examining the proposed affiliation schedules for completeness and accuracy.

LAW AND ANALYSIS

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. 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. Treas. Reg. § 1.1502-77(a). Thus, generally the common parent is the proper party to sign consents, including the Form 872 waiver to extend the period of limitations, for all members in the group. Treas. Reg. § 1.1502-77(a). The common parent and each subsidiary which was a member of the consolidated group during any part of the consolidated return year is severally liable for the tax for such year. Treas. Reg. § 1.1502-6 (a).³

The facts indicate that Corp A's merger into Corp B constituted a reverse acquisition. The elements of a reverse acquisition are listed in Treas. Reg. § 1.1502-75(d)(3)(i), which provides:

If a corporation (first corporation) or any member of a group of which the first corporation is the common parent acquires stock of another corporation (second corporation), and as a result the second corporation becomes a member of a group of which the first

for the years in question, and so we do not think that Corp D can be designated an agent for the remaining members of these consolidated groups.

³Temp. Reg. § 1.1502-77T provides exceptions to the general rule. Temp. Reg. § 1.1502-77T provides for alternative agents in certain circumstances and applies to waivers of the statute of limitations for taxable years for which the due date (without extensions) of the consolidated return is after September 7, 1988. Temp. Reg. § 1.1502-77T applies to the years at issue in this case. However, Treas. Reg. § 1.1502-77T is inapplicable here because it applies only to waivers of the statute of limitations and to statutory notices of deficiency, and not to closing agreements.

corporation is the common parent, and the stockholders (immediately before the acquisition) of the second corporation, as a result of owning stock of the second corporation, own (immediately after the acquisition) more than 50 percent of the fair market value of the outstanding stock of the first corporation, then any group of which the first corporation was the common parent immediately before the acquisition shall cease to exist as of the date of acquisition, and any group of which the second corporation was the common parent immediately before the acquisition shall be treated as remaining in existence (with the first corporation becoming the common parent of the group).

According to the facts, Corp B is the first corporation, the acquiring corporation, and Corp A is the second corporation, or the acquired corporation. In the transaction, Corp B acquired the assets of Corp A when Corp A merged into Corp B, with Corp B surviving. The shareholders of Corp A, as a result of owning stock of Corp A (immediately before the acquisition), owned (immediately after the acquisition) more than 50 percent of the fair market value of the outstanding stock of Corp B. Thus, this merger transaction constituted a reverse acquisition. As a result of the reverse acquisition, the Corp B and Subsidiaries consolidated group ceased to exist, and the Corp A and Subsidiaries consolidated group continued in existence, with Corp C, formerly Corp B, as its new common parent.

As a result of the second merger mentioned above: Corp C ceased to exist; the Corp A and Subsidiaries consolidated group ceased to exist; and all remaining former members of the Corp A consolidated group, the Corp B consolidated group, and the Corp A consolidated group became members of the Corp D and Subsidiaries consolidated group.

As a further result of this second merger, Corp D became a successor in interest to Corp C, formerly Corp B, which itself was a successor in interest to Corp A. Thus, Corp D is a successor of Corp C (formerly Corp B), and is a successor to a successor of Corp A. Depending on State law, Corp D may be primarily liable as successor for the debts of both Corp A and Corp C (formerly Corp B). Since it was a member of the Corp A and Subsidiaries consolidated group during tax years C and D, Corp A is severally liable under Treas. Reg. § 1.1502-6 (a) for the Corp A and Subsidiaries consolidated group's tax for tax years C and D. Since Corp B was a member of the Corp B and Subsidiaries consolidated group during tax years B through C, including short taxable year D, Corp C (formerly Corp B) is severally liable under Treas. Reg. § 1.1502-6 (a) for the Corp B and Subsidiaries consolidated group's tax for tax years B through C, including short taxable year D. Finally, Corp C was a member of the Corp C and Subsidiaries consolidated group

during taxable year D. Thus, Corp C is severally liable under Treas. Reg. § 1.1502-6 (a) for the Corp C and Subsidiaries consolidated group's tax for taxable year D. Accordingly, Corp D, as a successor to Corp C (formerly Corp B) and as a successor to the successor of Corp A, is liable with regard to the various several liabilities referred to above. You should obtain one or several Form(s) 906 from Corp D with regard to its liabilities.

The language you should use on the Form(s) 906 is as follows:

With regard to Corp A's several liability -- Identify the taxpayer on the Form 906 as "Corp D, as successor to Corp C (EIN: XX-XXXXXXX) (formerly Corp B), as the successor of Corp A (EIN: XX-XXXXXXX)", and put an asterisk after it. At the bottom of the Form 906, write, "*This is with respect to the several liability of Corp A (EIN: XX-XXXXXXX) for the consolidated tax of the Corp A (EIN: XX-XXXXXXX) and Subsidiaries consolidated group for taxable years C and D."

With regard to Corp B's (later known as Corp C 's) several liability -- Identify the taxpayer on the Form 906 as "Corp D (EIN: XX-XXXXXXX), as successor to Corp C (EIN: XX-XXXXXXX), formerly Corp B (EIN: XX-XXXXXXX)", and put an asterisk after it. On the bottom of the Form 906, write, "*This is with respect to the several liability of Corp B (EIN: XX-XXXXXXX) for the consolidated tax of Corp B (EIN: XX-XXXXXXX) and Subsidiaries consolidated group for the taxable years ended C and the short taxable year D."

With regard to Corp C's several liability -- Identify the taxpayer on the Form 906 as "Corp D, as successor to Corp C (EIN: XX-XXXXXXX)" and put an asterisk after it. On the bottom of the Form 906, write, "*This is with respect to the several liability of Corp C (EIN: XX-XXXXXXX) for the consolidated tax of the Corp C (EIN: XX-XXXXXXX) and Subsidiaries consolidated group for the taxable years ended after taxable year C."

We note that the above language does not address the several liabilities of the surviving members of the former Corp A consolidated group, the surviving members of the former Corp B consolidated group, and the surviving members of the former Corp C consolidated group. All of these former members are severally liable under Treas. Reg. § 1.1502-6 (a) for the tax of their respective consolidated groups for the time when they were members of those consolidated groups. We note that the proposed consolidated language contained in your memorandum of Date D, attempts to address this matter all on one Form 906. Again, we do not agree with your proposed language or your proposal to use only one Form 906.

All Forms 906 should be executed by an authorized officer of the proper entity identified above, analogous to the procedure set forth in Rev. Rul. 83-41, 1983-1 C.B. 399, clarified and amplified, Rev. Rul. 84-165, 1984-2 C.B. 305 (the Service will apply the rules applicable to the execution of the original returns to the execution of consents to extend the time to make an assessment).

Section 6061 provides that any return, statement or other document made under any internal revenue law must be signed in accordance with the applicable forms or regulations.

In the case of corporate returns, section 6062 provides that a corporation's income tax returns must be signed by the president, vice-president, treasurer, assistant treasurer, chief accounting officer or any other officer duly authorized to act. The fact that an individual's name is signed on the return is prima facie evidence that the individual is authorized to sign the return. I.R.C. § 6064. Analogizing this situation to that set forth in Rev. Rul. 84-165, 1984-2 C.B. 305, we think that any such officer may sign a Form 906, whether or not that person was the same individual who signed the return.

CASE DEVELOPMENT, HAZARDS AND OTHER CONSIDERATIONS:

As noted above, you propose to have 5 individuals (officers of the various taxpayers, who in the aggregate have authority to sign for all taxpayers concerned) sign one Form 906, and you state that you are presently examining the proposed affiliation schedules for completeness and accuracy. Because your proposed method is out of the ordinary and that neither we nor Procedural Branch have had an opportunity to review these proposed affiliation schedules, we will not opine on the validity or binding effect of these documents at this time. Please send in these affiliation schedules and a detailed explanation of how you intend to have the various individuals sign the Form (s) 906, and we will review and expeditiously advise you regarding the proposed affiliation schedules and your proposed method of binding these entities.

[REDACTED]

4 [REDACTED]

If you have any questions, please contact
of the Field Service Division at (202) 622-7930.

of the Corporate Branch

cc: Assistant Regional Counsel (TL),
Assistant Regional Counsel (LC),