Office of Chief Counsel
Internal Revenue Service

memorandum

CC:MSR:HOU:TL-N-40-99;
TL-N-41-99 and TL-N-42-99
RLShumway

date: JUN 16 1999

to: Assistant Chief Counsel (Field Service) CC:DOM:FS:4510

from: District Counsel, Houston District

subject: [redacted]

Request for Nondocketed Significant Advice Coordination

We request your assistance and review of several consolidated return "agency" questions posed by the Houston District, in the ongoing examination of the above-noted CEP Nondocketed consolidated corporations. The Case Manager has requested our assistance in determining the parties with statutory authority to bind the consolidated groups, and in drafting the appropriate language to be used in preparing Forms 872 (Consents to Extend the Time to Assess Tax) to extend the statute of limitations for the tax years [redacted], [redacted], [redacted] and [redacted]. These matters arise from the Houston District Director's ongoing CEP Large Case examination of [redacted], [redacted], [redacted], [redacted], and [redacted].

We have not previously provided you with a written request for advice or assistance on this recent Houston District Large Case request. However, your office has previously provided Illinois District advice on two prior occasions during the prior audit cycle, with respect to language to be used following the Taxpayer's corporate name changes. (1996 - Ms. Lorraine Gardner (CC:DOM:FS:4136) and 1997 - Mr. Peter K. Reilly (CC:DOM:FS,4143).

The assistance provided by the undersigned is in accordance with the Large Case Coordination Procedures for all significant advice provided in non-docketed large cases. The undersigned is

currently assigned to provide Examination with assistance on this case under the Attorney-Advisor Program.

Attached to this memorandum, is a "Draft" Memorandum we propose to issue to the Houston District in response to their request for legal advice. It contains a brief historical review of the underlying facts and concludes with draft language we believe is appropriate to prepare the subject Forms 872. We ask that you pre-review this draft memorandum and advise us at the earliest possible date of any changes or clarifications you deem necessary under the circumstances.

Should you have any questions with respect to this review, please contact the undersigned at (281) 721-7374.

BERNARD B. NELSON
District Counsel

By: Roberta L. Shumway
ROBERTA L. SHUMWAY
Senior Attorney

Attachment:
As Noted

cc:
Assistant Regional Counsel (TL), Midstates Region, Mark E. O'Leary; Assistant Regional Counsel (LC), Midstates Region, Rebecca W. Wolfe; CEP Case Manager, Houston District, Group 1110, Kathy Robbins

Office of Chief Counsel
Internal Revenue Service

memorandum

CC:MSR:HOU:TL-N-40-99;
TL-N-41-99; and TL-N-42-99
RLShumway

date:

to: Chief, Examination Division, Houston District
Attn: Case Manager Kathy Robbins, Group 1110

from: District Counsel, Houston District

subject: [redacted]

Request for Legal Advice and Assistance

This memorandum is in response to your recent request for advice regarding the appropriate wording and identification of the surviving "Taxpayer-Agent" for an agreement to extend the statute of limitations (Form 872) with respect to each of the above-noted CEP (Nondocketed) Large Case consolidated groups. Each of these formerly independent consolidated groups will need to have an appropriate "Agent" execute a Form 872, in order to facilitate your issuance of thirty-day letters, or in the alternative, statutory notice(s) of deficiency. You are beginning the process of your Large Case examination of these CEP taxpayers, for the tax periods [redacted] through [redacted].

We have requested and received additional information from Special Litigation Assistant John Jankowski, of Illinois District Counsel, and Team Coordinator Louie Wells, in order to fully understand the ramifications of the [redacted] and [redacted] merger transactions involving these same taxpayers. As you know, the old [redacted] group of consolidated entities (including [redacted], [redacted] and [redacted]) merged with the former [redacted] (EIN [redacted]) consolidated group. The [redacted] acquisition and merger took place on or about [redacted].

A review of the history of the corporate restructuring surrounding your examination of these entities is necessary in order to determine the appropriate agent under the consolidated regulations. The following historical series of events were gleaned from the information you provided this office.

The first parent entity, (EIN), filed consolidated corporate income tax returns (Form 1120) for all relevant calendar periods ending on December 31. For both of the tax years and , filed Forms 1120 under the corporate name . In , , a Delaware Corporation, formally changed its name to (EIN) filed Forms 1120 for each of the tax years , and . On , changed its name back to . For the and tax years, the taxpayer filed consolidated corporate income tax returns as using the EIN .

In a 1996 written advisory by Special Litigation Assistant John Jankowski, Illinois District Examination Division was advised to solicit a Form 872 from this taxpayer for the tax years and by identifying the taxpayer as: " " Subsequently, we understand that Case Manager James Baltikowski, Illinois District Examination Group 203, solicited a Form 872 with the recommended language and extended the statute through

In 1997, Special Litigation Assistant John Jankowski provided a second advisory, wherein Illinois District Examination was advised to solicit a supplemental Form 872 for the tax years and by identifying the taxpayer as: " " We understand that subsequently a Form 872 was solicited with the recommended language extending the statute through This advice was also coordinated with Field Service, under a Nondocketed Significant Advice Review by Mr. Peter Reilly, dated May 30, 1997. (CC:DOM:FS:PROC)

[redacted]

At all relevant times, the principal or majority shareholder of [redacted] was our parent entity noted above - [redacted] (EIN [redacted]). Approximately [redacted]% of the common stock of [redacted] was held by the general public. These same [redacted] shares were actively traded on the New York Stock Exchange. As a result, under the consolidated regulations, [redacted] and its subsidiaries filed separate consolidated income tax returns.

[redacted] (EIN [redacted]), filed consolidated corporate income tax returns (Form 1120) for calendar year tax periods ending on December 31. [redacted] filed Forms 1120 for each of the tax years [redacted], [redacted], and for a short period ending on [redacted], all under the name "[redacted]".

As part of a general corporate restructuring, [redacted] initiated steps to reacquire the publicly held shares of [redacted] In [redacted] of [redacted], [redacted] successfully reacquired the outstanding [redacted]% of publicly held shares of [redacted] and its entire consolidated group was later included in the consolidated income tax returns of [redacted] (EIN [redacted]), beginning with the tax year [redacted] ([redacted] results for [redacted] included the period February, [redacted] through December, [redacted]).

[redacted]

At all relevant times, the principal or majority shareholder of [redacted] was the parent entity noted above - [redacted] (EIN [redacted]). Approximately [redacted]% of the common stock of [redacted] was held by the general public and was actively traded on the New York Stock Exchange. As a result, under the consolidated regulations, [redacted] and its subsidiaries filed separate consolidated income tax returns.

[redacted] (EIN [redacted]), filed consolidated corporate income tax returns (Forms 1120) for all relevant calendar tax years ending on December 31. For purposes of this inquiry, Forms 1120 were filed by [redacted] for each of the tax years [redacted] through [redacted].

As part of a general corporate restructuring, [redacted] initiated steps in [redacted] to reacquire the publicly held shares of [redacted] In order to complete the process, [redacted] and [redacted] entered into an "Agreement and Plan of Merger" on [redacted]. The plan called for [redacted] (a wholly owned subsidiary of [redacted] to merge with and into [redacted] We understand that this merger was completed on or about [redacted], with [redacted] (EIN [redacted]) the surviving corporation under Delaware law. Accordingly, on or about [redacted], [redacted] successfully reacquired the outstanding [redacted]% of publicly held shares of [redacted] At that time, [redacted] and its entire consolidated group, became a member of the consolidated group of [redacted] (EIN [redacted]).

[redacted]

In late [redacted], [redacted] began exploring the possibility of entering into strategic combinations to reestablish itself in the [redacted] industry. As a result of this search, [redacted] and [redacted] (EIN [redacted]) entered into serious negotiations which culminated in a merger and acquisition agreement dated [redacted]. The merger agreement ("Agreement and Plan of Merger among [redacted], [redacted] and [redacted]") contemplated that [redacted] (a wholly owned Delaware subsidiary of U.S.A. [redacted]) would merge with and into [redacted], with [redacted] the surviving entity.

We understand that on [redacted], the "Agreement and Plan of Merger among [redacted], [redacted] and [redacted]" was consummated under Delaware State Law, as contemplated. Simultaneously, [redacted], the surviving entity following the merger with [redacted], changed its name to "[redacted]" In addition, [redacted] simultaneously changed its name to "[redacted]"

[redacted]

[redacted] (EIN [redacted] was incorporated on [redacted], and filed consolidated corporate income tax returns (Form 1120) for all relevant calendar tax years ending on December 31. For purposes of this inquiry, Forms 1120 were filed by [redacted]

[redacted] for each of the tax years [redacted] through [redacted]. On or about [redacted], [redacted] merged with and into [redacted] We understand that at that time, [redacted] became a member of the consolidated group of [redacted] (EIN [redacted]). As indicated above, [redacted] changes its name back to [redacted] on [redacted]. We understand that as of [redacted], [redacted] was co-owned by [redacted] ([redacted]%) and [redacted] ([redacted]%).

[redacted]

[redacted] (EIN [redacted]) filed corporate income tax returns (Forms 1120) for the [redacted] and [redacted] tax years. [redacted] was acquired by [redacted] in [redacted].

Finally, we note that the taxpayer reports that the former shareholders of [redacted] (EIN [redacted]) control approximately [redacted]% of the new "[redacted]" (EIN [redacted].

RECOMMENDATIONS:

We recommend that you use the following language for purposes of your proposed Forms 872:

1. For the former [redacted]; and [redacted]" (under EIN [redacted]).

For this entity, use the following description to identify the taxpayer for the tax years [redacted] through [redacted]:

"[redacted]; formerly [redacted]; formerly [redacted]."

You should then add an asterisk immediately thereafter, and also put an asterisk (*) at the bottom of the first page of this Form 872. After the second asterisk, type:

"With regard to the consolidated tax liability of [redacted] (EIN [redacted]) and [redacted], arising in the tax years [redacted], [redacted], and [redacted], and with regard to the consolidated tax liability of [redacted]

[redacted] (EIN [redacted]) and [redacted] arising in the tax year [redacted]."

2. For the former "[redacted]", (under EIN [redacted])

A. For this entity, use the following description to identify the taxpayer for the tax years [redacted], [redacted] and the short period ending [redacted]:

"[redacted]."

You should then add an asterisk immediately thereafter, and also put an asterisk (*) at the bottom of the first page of the Form 872. After the second asterisk, type:

"With regard to the consolidated tax liability of [redacted] (EIN [redacted]) and [redacted], arising in tax years [redacted], [redacted] and the short period ending [redacted]."

3. For the former "[redacted]", (under EIN [redacted])

For this entity, use the following description to identify the taxpayer for the tax years [redacted], [redacted], and [redacted]:

"[redacted]."

You should then add an asterisk immediately thereafter, and also put an asterisk (*) at the bottom of the first page of the Form 872. After the second asterisk, type:

"With regard to the consolidated tax liability of [redacted] (EIN [redacted]) and [redacted], arising in tax years [redacted], [redacted] and [redacted]."

4. For the former "[redacted]", (under EIN [redacted])

For this entity, use the following description to identify the taxpayer for the tax years [redacted] and [redacted]:

"[redacted]."

You should then add an asterisk immediately thereafter, and also put an asterisk (*) at the bottom of the first page of the Form 872. After the second asterisk, type:

"With regard to the consolidated tax liability of [redacted] (EIN [redacted]) and [redacted], arising in tax years [redacted] and [redacted].

5. For the former "[redacted], (under EIN [redacted]

For this entity, use the following description to identify the taxpayer for the tax years [redacted], [redacted], [redacted] and [redacted]:

"[redacted]."

You should then add an asterisk immediately thereafter, and also put an asterisk (*) at the bottom of the first page of the Form 872. After the second asterisk, type:

"With regard to the consolidated tax liability of [redacted] (EIN [redacted]) and [redacted], arising in tax years [redacted], [redacted], [redacted] and [redacted].

* * * * * *

Finally, you must identify a responsible "Officer" with the apparent and actual authority for each of these surviving entities, ([redacted], [redacted], [redacted], [redacted], and [redacted]) for the purpose of executing the necessary Forms 872. In the case of a corporation, persons authorized to sign a consent include the president, vice-president, treasurer, assistant treasurer, chief accounting officer, or any other officer duly authorized to act whether or not that person was the same individual who signed the return.

The primary rule for returns filed on a consolidated basis is that the common parent, in its own name, is the proper party to extend the statute of limitations on behalf of itself and each member of the group. The common parent remains the agent for the members of the group for years during which it was the common parent as long as it remains in existence. Tres. Reg. § 1.1502.77(a).

Should you have any questions with respect to these matters, please contact the undersigned at (281) 721-7374.

BERNARD B. NELSON
District Counsel

By: _____
ROBERTA L. SHUMWAY
Senior Attorney

cc:
Assistant Regional Counsel (TL), Midstates Region, Mark E. O'Leary; Assistant Regional Counsel (LC), Midstates Region, Rebecca W. Wolfe