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From:

Sent: Tuesday, February 24, 2009 3:15:09 PM

To:

Cc:

Subject: RE: Question about valid extensions of statute of limitations

This documents our telephone conversation of February 19, in which we discussed the issue you've addressed below.

As we've discussed, IRC 6501(c)(4) provides authority for the IRS and a taxpayer to agree to extend the period provided by statute for assessment. Neither section 6501(c)(4) nor the accompanying regulations specify who may sign the extension on behalf of the taxpayer. Revenue Ruling 83-41 (not 83-14 as noted below) states that the IRS will apply the rules governing the signing of original returns to determine who has authority to sign extensions of the period for assessment. With respect to corporate taxpayers, these rules are embodied in IRC 6062, which provides authority for a corporation's "president, vice-president, treasurer, assistant treasurer, chief accounting officer *or any other officer duly authorized so to act*" (emphasis supplied) to sign a tax return. Treas. Reg. 1.6062-1(c) indicates that an individual's signature on a corporation's return "shall be prima facie evidence" that the individual is authorized to sign the return for the corporation.

In your case, the person who has been asked to sign the assessment extension, the Director of Tax and Customs, is not an officer of the corporation. Thus, it initially appears that he may not have authority to sign either the corporation's return or an extension of the assessment statute under the Internal Revenue Code. See 2005 WL 6120835 (2005)(person must be an officer, as determined by corporation's bylaws and relevant state law, to sign return). However, the fact that the Director has signed the assessment extension constitutes prima facie evidence, under the regulations, that he is authorized to do so. See IRS SCA 200247046 (2002)(the fact of individual's signature is enough to sustain finding of signatory authority regardless of what title is used in connection with the signature).

Obviously the IRS is not going to challenge the Director's authority to sign the extension, since the execution of the extension favors the IRS in that it affords more time for the IRS to make an assessment. The corporation could attempt to avoid being bound by the extension by arguing that the Director was not authorized to sign the extension on the corporation's behalf, but it is unlikely in light of the written agreement of the corporation's officers clearly giving the Director authorization to sign returns for the corporation that the corporation would make such an argument. It is also unlikely that, if the argument were made, that it would be successful in a court of law, given the likelihood that the corporation would be held estopped from making the argument by the written authorization agreement.

For these reasons, I do not think that the Director's signing of the assessment extension should be of concern to the IRS.

Please feel free to call or e-mail me with further questions.