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From: [REDACTED]

Sent: Tuesday, February 26, 2019 5:29:04 PM

To: [REDACTED]

Cc: [REDACTED]

Bcc:

Subject: RE: 872 execution question - [REDACTED]

Hi

You asked us first whether, where the IRS did not timely sign a Form 872 Consent to Extend the Time to Assess Tax—due to a government shutdown at the time—but the taxpayer *did* sign the Consent, the consent is valid. If it is invalid, you also asked whether a prior Consent signed by a Power of Attorney (POA) is valid when the POA (1) lists a date range that includes all years at issue but does not mention them explicitly, and (2) conveys only the boilerplate POA authorities and does not go beyond that to list authority to sign consents.

Issue #1: The consent is invalid. The period of limitations to assess a tax may only be extended by consent “prior to the expiration” of the time to assess, and consent to extend “shall become effective when the agreement has been executed by both parties.” Treas. Reg. § 301.6501(c)-1(d). Here, the consent at issue was not executed by the IRS prior to the expiration of the period of limitations, at which point it can no longer be extended. That the failure to execute the extension was justified does not change this answer.

Issue #2: The prior Consent is valid for extending excise tax. (1) The POA gives a range of years that included all years at issue, and therefore the POA had authority to act on the taxpayers behalf for all years at issue. While the Internal Revenue Manual cautions against accepting POAs that grant general authority such as “all years,” I.R.M. 25.6.22.5.8.1(2)(a), in this case a specific range of years is specified, and that suffices. (2) The boilerplate POA form language explicitly grants the POA authority to sign “any agreements, **consents**, or similar documents” (emphasis added). This satisfies the Manual’s requirement that POAs be “specific in authorizing the representative to sign consents for the taxpayer.” I.R.M. 25.6.22.5.8.1(2)(b). **Note:** Because the POA only conveys authority to extend excise tax and not income tax, only excise tax was validly be extended by the Consent.

Please feel free to reach out to me with any additional questions.

Thanks.