



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

OFFICE OF
CHIEF COUNSEL

November 6, 1998

CC:DOM:FS:CORP

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INTERNAL REVENUE SERVICE NATIONAL OFFICE FIELD SERVICE ADVICE

MEMORANDUM FOR

FROM: ASSISTANT CHIEF COUNSEL (FIELD SERVICE)
CC:DOM:FS

SUBJECT: Consents to Extend Statutes of Limitation

This Field Service Advice responds to your memorandum dated August 10, 1998. 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 1 =
taxable year 2 =
taxable year 3 =
Date A =
Date B =
Date C =
Date D =
Date E =
Date F =
Date G =
Date H =
Date I =
Date J =

ISSUES:

1. Who is the proper party to execute Forms 2045 (Transferee Agreement) and 977 (Consent to Extend the Time to Assess Liability at Law or in Equity for Income, Gift, and Estate Tax Against a Transferee or Fiduciary) for the tax liabilities of the Corp A & Subsidiaries consolidated group for its taxable years 1 and 2?
2. Who is the proper party to execute Forms 872 (Consent to Extend the Time to Assess Tax) for the Corp B & Subsidiaries consolidated group for its taxable year 3?
3. What is proper language to use on the Forms 977 and 2045 for the tax liabilities of the Corp A & Subsidiaries consolidated group's taxable years 1 and 2?
4. What is proper language to use on the Form 872 for the Corp B & Subsidiaries consolidated group's taxable year 3?

CONCLUSION:

1. Corp C is the proper party to execute Forms 2045 (Transferee Agreement) and 977 (Consent to Extend the Time to Assess Liability at Law or in Equity for Income, Gift, and Estate Tax Against a Transferee or Fiduciary) for the tax liabilities of the Corp A & Subsidiaries consolidated group for its taxable years 1 and 2.
2. Corp D is the proper party to execute Forms 872 (Consent to Extend the Time to Assess Tax) for the Corp B & Subsidiaries consolidated group for its taxable year 3.
3. The proper language to use on the Forms 977 and 2045 for the tax liabilities of the Corp A & Subsidiaries consolidated group's taxable years 1 and 2 is "Corp C (E.I.N. XX-XXXXXXX) as transferee of Corp A (E.I.N. XX-XXXXXXX)."
4. The proper language to use on the Form 872 for the Corp B & Subsidiaries consolidated group's taxable year 3 is "Corp D (E.I.N. XX-XXXXXXX), as alternative agent for the Corp B & Subsidiaries consolidated return group pursuant to Temp. Treas. Reg. § 1.1502-77T, and as successor by merger of Corp B (E.I.N. XX-XXXXXXX).*" Put an asterisk immediately thereafter (as shown). At the bottom of the page, the following language should be added (including the asterisk):

*This is with respect to the consolidated tax liability of the Corp B (E.I.N. XX-XXXXXXX) & Subsidiaries consolidated return group for the taxable year 3.

FACTS:

Corp A was a common parent of, and filed consolidated returns for, the Corp A & Subsidiaries consolidated group for taxable years 1 and 2. Sometime in or around Date A, Corp B obtained the stock of Corp A. This transaction may have constituted a reverse acquisition. As a result of the transaction, Corp A became a member of the affiliated group of which Corp B was the common parent. Corp B filed consolidated returns for the group for taxable year 3.

In Date F, Corp B and its first-tier subsidiary, Corp A, simultaneously merged into Corp D and Corp C, respectively. Corp D and Corp C survived the mergers.

The Service obtained several Forms 872 covering various periods:

a. Corp A & Subsidiaries' taxable years 1 and 2 tax liabilities –

Corp A executed Forms 872 with regard to the consolidated group's taxable years 1 and 2 in: (1) Date B (extending the date to Date D); (2) Date C (extending the date to Date G); and (3) Date E (extending the date to Date I). On Date I, Exam obtained a Form 872 from Corp D to extend the assessment date to Date J.

b. Corp B & Subsidiaries' taxable year 3 tax liabilities --

Corp B executed a Form 872 with regard to the consolidated group's taxable year 3 in Date F, extending the assessment date to Date I. In Date H, Exam obtained a Form 872 from Corp D extending the assessment date to Date J.

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 in which it was the common parent of the group. Treas. Reg. §§ 1.1502-77(a); 1.1502-77T(a)(4)(i). Here, prior to its merger into Corp C, Corp A was the common parent for the Corp A & Subsidiaries consolidated group's taxable years 1 and 2 and therefore was a proper party to sign an extension of the statute of limitations with regard to those years. Thus, as a result of Corp A's merger into Corp C, the latter became a proper party to execute a Form 872 regarding the Corp A group's taxable years 1 and 2.¹ Treas. Reg. § 1.1502-77T(a)(4)(ii).

At the same time, there may also be another party that may properly execute a Form 872 for the Corp A group's taxable years 1 and 2. A reverse acquisition occurs under Treas. Reg. § 1.1502-75(d)(3)(i) if (i) a corporation (the "first corporation") acquires stock of another corporation (the "second corporation"), and (ii) as a result the second corporation becomes (or would become but for the

¹ Assuming, that is, that I.R.C. § 381(a) applies to this transaction and the transaction constituted a statutory merger.

application of § 1.1502-75(d)(3)) a member of the group of which the first corporation is a common parent, (iii) in exchange (in whole or in part) for the stock of the first corporation, and (iv) 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. If a reverse acquisition occurs, any group of which the first corporation was the common parent immediately before the acquisition ceases to exist as of the date of the acquisition, and any group of which the second corporation was the common parent immediately before the acquisition is treated as remaining in existence, with the first group becoming the common parent of the group.

Although we do not have all the relevant facts to make a definitive determination, it appears that Corp B's acquisition of Corp A's stock may have constituted a reverse acquisition. If so, the Corp A group did not cease on the date of the acquisition but continued in existence with Corp B as the common parent, pursuant to Treas. Reg. § 1.1502-75(d)(3)(i). As a result, Corp B became an alternative agent (under Treas. Reg. § 1.1502-77T(a)(4)(iv)), and also stepped into the shoes of the common parent, for the Corp A group's taxable years 1 and 2. Later, upon the merger of Corp B into Corp D, the latter became the successor to Corp B (i.e., the former common parent) and therefore became an alternative agent for the Corp B (previously, the Corp A) group. See Treas. Reg. § 1.1502-77T(a)(4)(ii). Under this analysis, it inexorably follows that Corp D became a proper party to execute the Form 872 for the Corp A's taxable years 1 and 2.

In short, if Corp B's acquisition of the Corp A stock constituted a reverse acquisition, an argument could be made that either Corp A or Corp B could properly execute a Form 872 with respect to the Corp A group's taxable years 1 and 2. The Tax Court approved such a result in Union Oil Company of California v. Commissioner, 101 T.C. 130 (1993). Then, upon the subsequent mergers of Corp A into Corp C and Corp B into Corp D, either Corp C or Corp D could be an alternative agent under Treas. Reg. § 1.1502-77T(a)(4)(ii).

Although we believe the foregoing analysis is sound, we note that it has not been considered by a court. Accordingly, out of an abundance of caution, to obviate any possibility that the Form 872 executed by Corp D with respect to the Corp A group's taxable years 1 and 2 may be inoperative to extend the statute of limitations for those years, you should secure Forms 2045, Transferee Agreement, and a Form 977, Consent to Extend the Transferee statute of limitations, from Corp C. Under I.R.C. § 6901(c)(1), the Service has 1 year after the expiration of the period of limitations for assessment (here, Date I) within which to make assessment against the initial transferee (here, Corp C). Thus, the Service has until June 30, 1999, to assess transferee liability against Corp C or to obtain an extension of the statute of limitations under I.R.C. § 6901.

The transferee forms should read as follows:

Corp C (E.I.N. XX-XXXXXXX) as transferee of Corp A (E.I.N. XX-XXXXXXX).

The forms should be signed by a current officer of Corp C. Under the officer's name, you should type in his or her title and the name "Corp C." ²

Corp B, the common parent of Corp B & Subsidiaries consolidated group, merged into Corp D, and ceased to exist. Assuming that the merger qualifies as a statutory merger and that Corp D is a "successor" under state law, Corp D is now the proper party (alternative agent) to execute Forms 872 with respect to the taxable year 3 tax liability of the Corp B & Subsidiaries consolidated group. Treas. Reg. § 1.1502-77T(a)(4)(ii). Corp D properly executed the last Form 872 with regard to the Corp B & Subsidiaries consolidated group's taxable year 3 tax liability. This extension agreement is valid and the Service has until Date J to either assess any unpaid tax or obtain another Form 872 from Corp D to extend the statute of limitations.

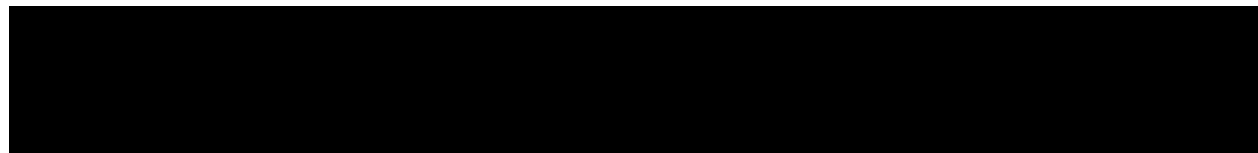
For extending the statute of limitations with regard to the Corp B & Subsidiaries consolidated group's taxable year 3, we recommend the following caption:

Corp D (E.I.N. XX-XXXXXXX), as alternative agent for the Corp B & Subsidiaries consolidated return group pursuant to Temp. Treas. Reg. § 1.1502-77T, and as successor by merger of Corp B (E.I.N. XX-XXXXXXX).*

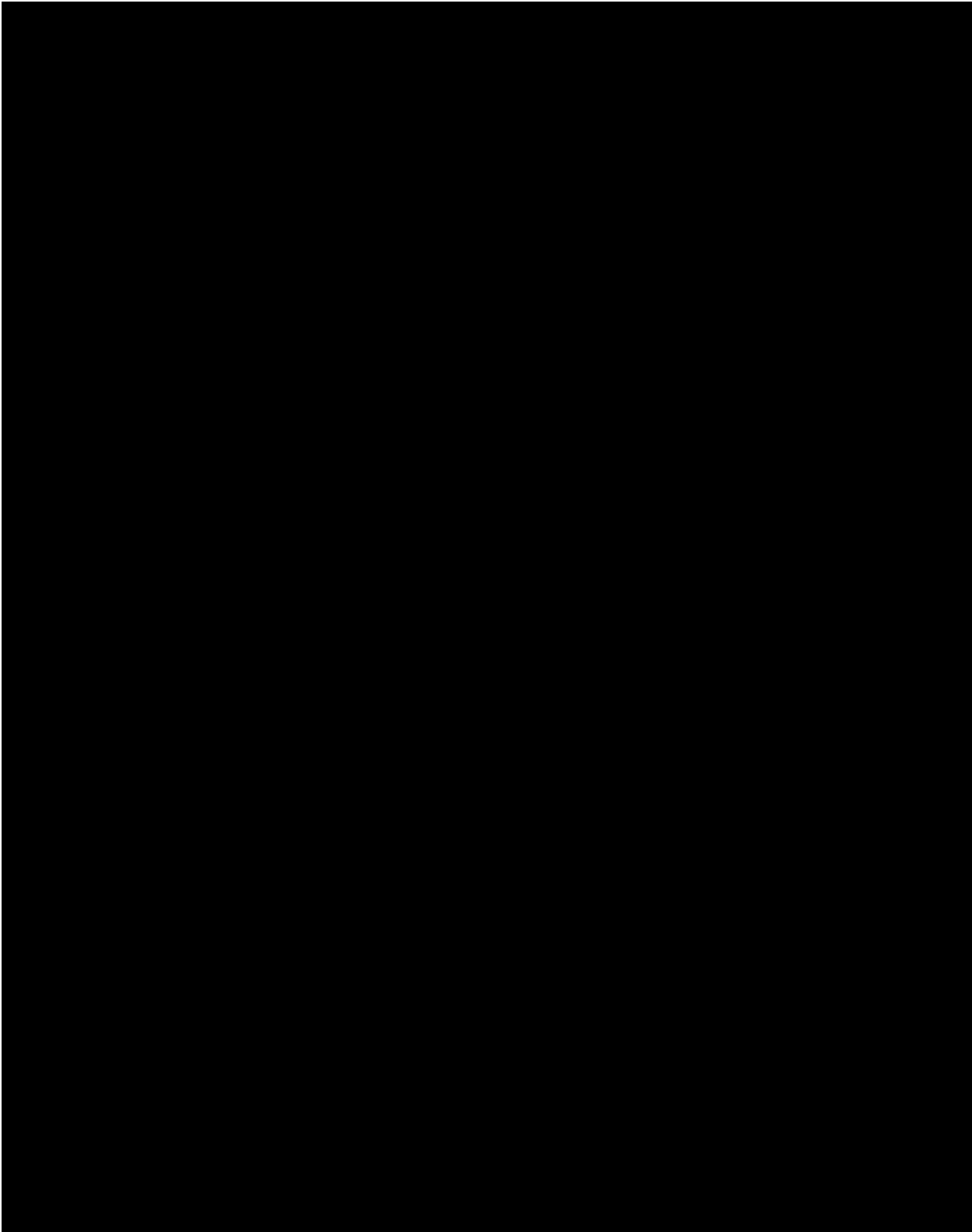
Put an asterisk immediately thereafter (as shown). At the bottom of the page, the following language should be added (including the asterisk):

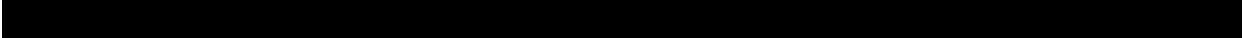
*This is with respect to the consolidated tax liability of the Corp B (E.I.N. XX-XXXXXXX) & Subsidiaries consolidated return group for the taxable year 3.

CASE DEVELOPMENT, HAZARDS AND OTHER CONSIDERATIONS:



² Examination will need to check the merger agreement between Corp C and Corp A to make sure it states Corp C assumes the liabilities of Corp A. See Southern Pacific Transportation Co. v. Commissioner, 84 T.C. 387, 394 (1985).





If you have any further questions, please call (202) 622-7930.

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By: _____
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cc: Assistant Regional Counsel (LC)
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