

Office of Chief Counsel
Internal Revenue Service

memorandum

CC:LM:RFP:CHI:1:TL-N-2213-01
RAVillageliu

date: April 3, 2001

to: David Oyler, LMSB Group 1531,
860 East Algonquin Road, Schaumburg, IL 60173
Attn.: Irwin Shudnow, Team Coordinator via Facsimile Transmission

from: ROGELIO A. VILLAGELIU
Special Litigation Assistant

subject: AO: ██████████ consolidated return group.
Extension of Statute of Limitations for consolidated return group
Form: 1120
Year: ██████

This writing may contain privileged information. Any unauthorized disclosure of this writing may have an adverse effect on privileges, such as the attorney client privilege. If disclosure becomes necessary, please contact this office for our views. Our view is that disclosure of this particular opinion to the taxpayer, for purposes of obtaining a consent, is appropriate.

This Chief Counsel Advice responds to Team Coordinator Irwin Shudnow's oral request for assistance of April 3, 2001. This memorandum should not be cited as precedent.

FACTS

The Service wants to extend the statute for the ██████████ ██████████ consolidated return group's U.S. Corporation Income Tax for the group's taxable years ██████████. In ██████████ and ██████████ the consolidated return group was headed by ██████████ (formerly known as ██████████), EIN: ██████████, a Delaware corporation. On ██████████, ██████████, EIN: ██████████, reorganized, pursuant to a plan of reorganization allegedly qualifying under I.R.C. Section 368(a)(1)(C) or (D). Pursuant to the plan of reorganization and under Delaware law, the consolidated group common parent, ██████████, EIN: ██████████, liquidated.¹ The common parent's

¹As it is usual in reorganizations involving multicorporate groups, the parties add to the reigning confusion by trading

010019

certificate of dissolution was filed with the State of Delaware and became effective on [REDACTED]. The common parent did not designate another member of the group as agent for the members of the group for taxable years ending prior to its dissolution. The remaining members, subsequently, designated the new common parent [REDACTED] (EIN: [REDACTED]) f/k/a [REDACTED] (EIN: [REDACTED]) as the new agent for the members of the group.

The [REDACTED] Form 1120 shows the taxpayer's name as "[REDACTED] [REDACTED] formerly [REDACTED] [REDACTED] ([REDACTED])." The [REDACTED] Form 1120 shows the taxpayer's name simply as "[REDACTED] ([REDACTED]) [REDACTED] ([REDACTED])." [REDACTED] EIN: [REDACTED] went out of existence in [REDACTED]. The consolidated return for [REDACTED] shows the taxpayer's name as "[REDACTED] [REDACTED]." This new common parent is [REDACTED] EIN: [REDACTED]. Consents for [REDACTED] and [REDACTED] were obtained, pursuant to an opinion of this office dated April 6, 1999, under the symbols CC:MSR:ILD:CHI:TL-N-1049-99. At issue is only the preparation of consents for the year [REDACTED].

We are assuming that [REDACTED] (E.I.N.: [REDACTED] [REDACTED]) (formerly [REDACTED]) remains in existence on the date the consent is obtained. You must verify this, as the opinion is based on this assumption.

names back and forth. This case is no exception. [REDACTED] [REDACTED], EIN: [REDACTED], a Delaware corporation, was the surviving corporation of the [REDACTED] reorganization. At the time of the reorganization, [REDACTED] was only a subsidiary of the liquidating consolidated return common parent (for the years [REDACTED] [REDACTED], EIN: [REDACTED] [REDACTED]. "[REDACTED] [REDACTED]," EIN: [REDACTED], however, had been the consolidated return group common parent for the years [REDACTED] through [REDACTED]. During the years when [REDACTED] [REDACTED], [REDACTED], was the common parent, the company's name was [REDACTED]. On [REDACTED], the company changed its name from "[REDACTED]" to "[REDACTED]." This is probably because it was no longer the common parent (for [REDACTED]). After the [REDACTED] reorganization merger, [REDACTED] resumed its role of common parent for subsequent years. [REDACTED] [REDACTED] also recovered its name. On [REDACTED], it changed its name from "[REDACTED]" to "[REDACTED] [REDACTED]." It retained its EIN, to wit, EIN: [REDACTED].

ISSUE

1. Who is the proper party to execute Form 872 for the [REDACTED] consolidated group for the tax year [REDACTED]?

Answer: The return for the year [REDACTED] was signed by the common parent for the group's [REDACTED] year, [REDACTED], [REDACTED]. Assuming that it remains in existence, this is the entity that should sign the Form 872, consent.

2. Provide the language for the Form 872

Answer: On the front of the Form 872, on the line designated taxpayer, you may type the name of the consolidated group exactly as it appears on the consolidated return for the year [REDACTED], for which the consent is being signed. Mr. Shudnow reports that the return reads "[REDACTED]." You can type it exactly like that, on the Form 872. If you prefer to make the name of the company totally clear, you may, instead type it as "[REDACTED] (EIN: [REDACTED]) [REDACTED]" This is totally optional in this case. Either way of typing the name provides for a legally effective consent.

On the second page of the Form 872, just under the signature line, type the name of the individual authorized to execute the Form 872, his/her title, and the name of the corporation for which s/he is signing (the corporation of which he is a current officer).

In this case, a good way of doing it would be:

NAME OF THE PERSON

TITLE

[REDACTED], for itself,
and as agent for the [REDACTED]
[REDACTED] consolidated
group.

However, the consent would still be legally valid, even, if it were missing some of the above information, as long as the signature was valid and properly authorized. I.R.C. §6062 provides, generally, 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. An individual's name signed on the return is prima facie evidence that the individual is authorized to sign

the return. Accordingly, any such officer may sign a consent, whether or not that person was the same individual who signed the return. Rev. Rul. 83-1 C.B. 349. We recommend that you verify that the person signing for the corporation is authorized to sign, and that you use all of the language set forth in the example above, in this particular case.

3. Is there transferee liability in this case for the consolidated return group tax liability?

Answer: We believe that there is. On [REDACTED], [REDACTED], EIN: [REDACTED], the consolidated return group common parent, until then, reorganized. Pursuant to the plan, [REDACTED], EIN: [REDACTED], was the surviving corporation of the reorganization, and [REDACTED], EIN: [REDACTED], dissolved. In our opinion, the surviving corporation [REDACTED], EIN: [REDACTED], now again known as [REDACTED] (having recovered its original name after [REDACTED], [REDACTED], dissolved) assumed the liability of the dissolved common parent for the taxable year [REDACTED] (and for [REDACTED] and [REDACTED] as discussed in our prior opinion to you of April 6, 1999, already mentioned). Because the plan of reorganization for the company does not appear to expressly assume the liabilities of the dissolved corporation, you should be prepared to assert transferee liability in equity, using the appropriate state fraudulent transfer statute to supplement I.R.C. Section 6901 as necessary.

As you did for [REDACTED] and [REDACTED], we recommend that you request [REDACTED] (E.I.N.: [REDACTED]) to execute the Form 977, Consent to Extend the Time to Assess Liability At Law or Equity for Income, Gift and Estate Tax Against a Transferee or Fiduciary, and the Form 2045, Transferee Agreement, as a precaution in this situation.

4. How do you preserve the statute of limitations for transferee liability?

Answer: As we previously advised you, to preserve the statute of limitations for transferee liability, Forms 2045 (Transferee Agreement) and 977 (Consent to Extend the Time to Assess Liability at Law or Equity for Income, Gift, and Estate Tax Against a Transferee or Fiduciary) should be executed by [REDACTED] (EIN: [REDACTED]). You would use a Form 2045 and a Form 977 for [REDACTED]. We suggest that you solicit those forms.

5. What names should you use in the Forms 2045 and 977?

To preserve the statute of limitations for transferee liability, Forms 2045 (Transferee Agreement) and 977 (Consent to Extend the Time to Assess Liability at Law or Equity for Income, Gift, and Estate Tax Against a Transferee or Fiduciary) should be executed by [REDACTED] (EIN: [REDACTED]). List the transferor's name in the Forms 2045 and 977, as follows:

" [REDACTED] (EIN: [REDACTED]) "

Similarly, list the transferee's name in the Forms 2045 and 977, as follows:

" [REDACTED], (EIN: [REDACTED]), formerly known as [REDACTED] [REDACTED], (EIN: [REDACTED]). "

You will note that this is the first time that we include the former name of [REDACTED]. The reason why is because that was the name of the company at the time of the transfer. This allows for a logical tie-in between the various names at issue, in the transfer.

LEGAL OPINION AND DISCUSSION

The common parent for [REDACTED] was [REDACTED] (EIN: [REDACTED]). Assuming that you verify that it remains in existence, said company is the agent of the group for the year [REDACTED]. It is the company that signs the Form 872. See Treas. Reg. Section 1.1502-77(a) and Craigie, Inc. v. Commissioner, 84 T.C. 466 (1985).

[REDACTED] (E.I.N.: [REDACTED]) had been the common parent of the [REDACTED] consolidated group before its dissolution. However, after it transferred substantially all of its assets into its subsidiary [REDACTED] (E.I.N.: [REDACTED]), [REDACTED] (E.I.N.: [REDACTED]) ceased to exist and [REDACTED] (E.I.N.: [REDACTED]) became the new common parent of the group. The group continued to exist under Treas. Reg. § 1.1502-75(d)(2). Under Treas. Reg. § 1.1502-75(d)(2) the group shall be considered as remaining in existence notwithstanding that the common parent is no longer in existence if the members of the affiliated group succeed to and become the owners of substantially all the assets of such former parent and there remains one or more chains of includible corporations connected through stock ownership with a common parent corporation which is a includible corporation and which was a member of the group prior to the date such former parent ceases to exist.

[REDACTED] (E.I.N.: [REDACTED]) and the

other members of the affiliated group succeeded to and become owners of substantially all of the assets of [REDACTED] (E.I.N. [REDACTED]) pursuant to a plan of reorganization under either I.R.C. § 368(a)(1)(C) or (D). [REDACTED] (E.I.N.: [REDACTED]) was the new common parent of the [REDACTED] consolidated group after the dissolution. Prior to the end of the year [REDACTED] (EIN; [REDACTED]) had already disappeared. The [REDACTED] return was filed by [REDACTED] (EIN: [REDACTED]) as the new common parent.

Transferee Liability

Finally, you should consider protecting the transferee liability statute of limitations. On [REDACTED] [REDACTED], EIN: [REDACTED], reorganized. Pursuant to the plan, [REDACTED] EIN: [REDACTED], [formerly [REDACTED]] was the surviving corporation. The taxpayer reported the transaction as qualifying as a reorganization under either I.R.C. Section 368(a)(1)(C) or (D). Under the plan, *inter alia*, voting common stock of [REDACTED], was issued to [REDACTED] in exchange for all of the assets of [REDACTED]. These shares were then distributed to all of the shareholders of [REDACTED]. In our opinion, [REDACTED] [f/k/a [REDACTED]] assumed [REDACTED]'s liabilities, some of them expressly, and the rest under state general corporation law principles because of having received its transferor's assets and being the survivor of the merger.

CONCLUSION

This opinion is being sent to you by facsimile transmission, per your request, and by regular mail. The legal file with respect to the particular legal questions covered in this opinion is now closed in this office. If you have further questions, please contact the undersigned at (312) 8867-9225, ext. 308.

STEVEN R. GUEST
Associate Area Counsel
(Large and Mid-Size Business)

By: _____
ROGELIO A. VILLAGELIU
Special Litigation Assistant

CC: Steven R. Guest
Associate Area Counsel, LMSB

CC: James C. Lanning
Area Counsel LMSB

CC: William G. Merkle
Associate Area Counsel (Strategic Litigation), LMSB

CC: Barbara B. Franklin
Senior Legal Counsel, LMSB

CC: TSS4510

a:\[REDACTED]TL-N-2213-01.wpd