

Office of Chief Counsel  
Internal Revenue Service

**memorandum**

CC:MSR:AOK:OKL:TL-N-3278-00  
ORLatrobe

date: **JUL 24 2000**

to: Chief, Examination Division, Arkansas-Oklahoma District

from: District Counsel, Arkansas-Oklahoma District, Oklahoma City

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subject: Advisory Opinion  
Consent to Extend the Time to Assess  
Taxpayer: [REDACTED]  
EIN: [REDACTED]  
Taxable Years: [REDACTED]

This is in response to your memorandum, dated May 31, 2000, requesting our advice as to the proper party and format for the execution of a Form 872, extending the period for the assessment of taxes as to the above years.

DISCLOSURE STATEMENT

This advice constitutes return information subject to I.R.C. § 6103. This advice contains confidential information subject to attorney-client and deliberative process privileges and if prepared in contemplation of litigation, subject to the attorney work product privilege. Accordingly, the Examination or Appeals recipient of this document may provide it only to those persons whose official tax administration duties with respect to this case require such disclosure. In no event may this document be provided to Examination, Appeals, or other persons beyond those specifically indicated in this statement. This advice may not be disclosed to taxpayers or their representatives.

This advice is not binding on Examination or Appeals and is not a final case determination. Such advice is advisory and does not resolve Service position on an issue or provide the basis for closing a case. The determination of the Service in the case is to be made through the exercise of the independent judgment of the office with jurisdiction over the case.

**FACTS**

The facts are as stated in your memorandum. No independent review of the facts by this office has been made or requested.

On [REDACTED], [REDACTED], an [REDACTED] in the southwestern United States, entered into an Agreement and Plan of Merger whereby [REDACTED] were to be merged with and into [REDACTED], also an [REDACTED] in the southwestern United States.

This proposed merger was completed on [REDACTED]. [We note that there is somewhat of an inconsistency here in that the first paragraph states that the merger was with [REDACTED], yet the remaining paragraphs indicate that [REDACTED] was merged into [REDACTED]. The facts in this regard should be resolved. We have proceeded on the premise that the merger was with [REDACTED].]

As a result, [REDACTED] (EIN: [REDACTED]), a subsidiary of [REDACTED], "purchased all of the outstanding stock of [REDACTED] into its operations." The meaning of "purchased... into its operations" is not entirely clear. Please notify our office if your meaning is inconsistent with the premises that we have relied upon.

On that date, [REDACTED], [REDACTED] "for all practical purposes ... ceased to exist." The effect of the merger was that [REDACTED] was the surviving entity. We understand this to mean that [REDACTED] did in fact cease to exist and that the entities were merged into [REDACTED] as the surviving entity.

[REDACTED] continues to operate as a subsidiary of [REDACTED].

Certain factual assumptions have been made in arriving at our office's position. These are:

1. [REDACTED] merged with and into [REDACTED], a subsidiary of [REDACTED], with [REDACTED] as the surviving corporation;
2. [REDACTED] is the successor under the applicable state merger statutes to [REDACTED] and now has the primary liability as successor to the liabilities of [REDACTED]; and

3. [REDACTED] and its Subsidiary were the only two members of the [REDACTED] and [REDACTED] consolidated group, and they both merged with and into [REDACTED], with [REDACTED] as successor to both corporations.

If any of these assumptions are not true, please re-submit your request for advice under the correct facts.

#### DISCUSSION

Based upon the above assumptions, we conclude that, since there are no members of the [REDACTED] consolidated group remaining in existence as a result of the transaction taking place on [REDACTED], the question of whether there is an agent to act for the remaining members of the group is moot.

[REDACTED] is the proper party to sign the Form 872 as successor to [REDACTED] with regard to the consolidated income tax liability of the [REDACTED] and [REDACTED] consolidated group. If all of the above assumptions are true, there is no need to obtain a Form 872 from [REDACTED].

On the Form 872, the caption should read as follows:

"[REDACTED]. (EIN: [REDACTED]), as successor by merger to [REDACTED] (EIN: [REDACTED]) \*."

At the bottom of the first page of the Form 872, the asterisk should refer to the following:

"\* with respect to the consolidated income tax liabilities of the [REDACTED] consolidated group for the taxable periods ended [REDACTED], and [REDACTED]."

In addition, the signature block on page 2 of the Form 872 should be signed as follows:

"[REDACTED] as successor to the [REDACTED]."

This block should be signed by a current officer of [REDACTED].

It is also noted that the provisions of I.R.C. § 6501(c)(4)(B) should be followed with great care, and should be documented in the file.

If you have any further questions with regard to the above, your new contact with regard to the above case will be Mr. C. Glenn McLoughlin at 405-297-4815.

MICHAEL J. O'BRIEN  
District Counsel

by: /s/ OSMUN R. LATROBE  
Osmun R. Latrobe  
Special Litigation Assistant

cc: CC:MSR:ARC(TL)