

Office of Chief Counsel
Internal Revenue Service

memorandum

CC:NER:NED:BOS:TL-N-6742-00
BJLaterman

date: JAN 09 2001 - 6724

to: Area Director, Area 1
Jim Biracree, Team Manager
Attn: Dennis Courtemanche, Team Coordinator

from: LMSB Associate Area Counsel, Boston

subject:

██████████ through ██████████ Statute Extensions

Statute Expiration: ██████████ & ██████████

This is in response to your request that we provide advice regarding extending the statute of limitations for the above-mentioned consolidated group's ██████████ through ██████████ taxable years.

██████████ was the parent corporation of an affiliated group of corporations which filed consolidated federal income tax returns for the taxable years ██████████ through ██████████. During the taxable years ██████████ through ██████████, ██████████ had ██████████ subsidiaries. In ██████████, the ██████████ group was "reorganized". As a result of the ██████████ reorganization, ██████████ and some of its subsidiaries are now subsidiaries of ██████████. The other subsidiaries of ██████████ remained subsidiaries of said corporation.

The ██████████ through ██████████ returns of ██████████ were signed by ██████████, Vice President, CFO and Treasurer. A statute extension was secured for ██████████ and it was signed by ██████████, CFO of ██████████. The directors of ██████████, authorized ██████████, CFO of ██████████ to execute a Form 872 to extend the ██████████ statute of limitations to ██████████. ██████████, President of ██████████, signed the most recent extensions for ██████████ through ██████████ and will be signing the new extensions.

On ██████████, we rendered advice regarding extending the statute for the above-mentioned consolidated group's ██████████ taxable year. You have inquired as to whether new extensions

for [REDACTED], [REDACTED] and [REDACTED] should be still secured from [REDACTED] in view of the acquisition by [REDACTED] of the [REDACTED] in [REDACTED]. The Agreement and Plan of Merger by and among [REDACTED], [REDACTED] and [REDACTED] provides for the merger of [REDACTED] with and into [REDACTED], a wholly owned subsidiary of [REDACTED]. The Agreement further provides that [REDACTED] shall be the surviving corporation in the merger and shall continue its corporate existence. The acquisition had no effect upon [REDACTED] and it continues in existence as a subsidiary of [REDACTED] which is now a wholly owned subsidiary of [REDACTED].

Generally, the common parent, with certain exceptions not applicable here, is the sole agent for each member of the group, duly authorized to act in its own name in all matters relating to the tax liability for the consolidated return year. Treas. Reg. § 1.1502-77(a). The common parent in its name will give waivers, and any waiver so given, shall be considered as having also been given or executed by each such subsidiary. Treas. Reg. § 1.1502-77(a). Thus, generally the common parent is the proper party to sign consents, including the Form 872 waiver to extend the period of limitations, for all members in the group. Treas. Reg. § 1.1502-77(a). Furthermore, the provisions of Treas. Reg. § 1.1502-77(a) shall apply whether or not a consolidated return is made for any subsequent year, and whether or not one or more subsidiaries have become or have ceased to be members of the group at any time.

Treas. Reg. § 1.1502-77(c) provides that, unless the District Director agrees to the contrary, an agreement entered into by the common parent extending the time within which an assessment may be made in respect of the tax for a consolidated return year, shall be applicable to each corporation which was a member of the group during any part of such taxable year. The common parent and each subsidiary which was a member of the consolidated group during any part of the consolidated return year is severally liable for the tax for such year. Treas. Reg. § 1.1502-6(a).

Temporary Regulation § 1.1502-77T(a)(4) provides for agents if the common parent ceases to be common parent of the consolidated group, whether or not the consolidated group remains in existence. Pursuant to Temporary Regulation § 1.1502-77T(a)(4), an agent for the group is:

- (i) The common parent of the group for all or any

' part of the year to which the notice or waiver applies.

Temporary Regulation § 1.1502-77T(a)(4) is applicable to waivers of the statute of limitations for taxable years for which the due date without extensions of the consolidated return is after September 7, 1988. Temp. Reg. § 1.1502-77T(a)(3). Therefore, said regulation provision is applicable in this case.

In this case, the common parent, [REDACTED] is still in existence and, therefore, it is still the agent for the consolidated group (in existence in [REDACTED] through [REDACTED]) under the provisions of Temporary Regulation § 1.1502-77T(a)(4)(i). The caption on the Form 872 should be [REDACTED].* At the bottom of the page you should add: * [REDACTED] has executed the Form 872 as agent for the [REDACTED], [REDACTED] and [REDACTED] taxable years. Therefore, based on the facts¹ provided we conclude that a Form 872 executed by a current officer of [REDACTED] the still existing parent of the group for the [REDACTED] through [REDACTED] taxable years will extend the period for assessment of tax for said taxable years.

Furthermore, I.R.C. § 6501(c)(A)(B) provides that the Service shall notify the taxpayer of their right: 1) to refuse to extend the period of limitations; or 2) to limit such extension to particular issues; or 3) to limit the extension to a particular period of time. This notice must be provided each time an extension is requested.

If we can be of any further assistance, please feel free to contact the undersigned at 617-565-7855.


BARRY J. LATERMAN
Special Litigation Assistant

¹ We note that our advice is based on our understanding that the [REDACTED] from whom you will solicit the extension is the same corporation that was the common parent for [REDACTED] through [REDACTED]. You should confirm that the EIN is the same as that set forth on the returns for [REDACTED] through [REDACTED].