

Office of Chief Counsel
Internal Revenue Service

memorandum

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RARowley

date: APR 16 2001

to: Team Manager, LMSB Group 1711
Attn: Senior Team Coordinator Danny Priest

from: Acting Area Counsel
(Retailers, Food and Pharmaceuticals)

subject: Consent Extending Statute of Limitations - Consolidated Group

This responds to the request for assistance in the above matter from Senior Team Coordinator Danny Priest, dated February 28, 2001. This memorandum should not be cited as precedent.

Mr. Priest is examining the [REDACTED] and [REDACTED] returns of a partnership named [REDACTED]. Because [REDACTED] comes within the "small partnership" exception of I.R.C. § 6231(a)(1)(B)(i), the TEFRA provisions do not apply to that partnership. Accordingly, Mr. Priest has correctly concluded that the statute of limitations can be extended with respect to flow-through items for the various partners only by obtaining consents as to each of those partners.

One of [REDACTED]'s partners is a corporation named [REDACTED] [REDACTED]. (" [REDACTED] "). [REDACTED] is a subsidiary in an affiliated group which, for taxable years ended [REDACTED], filed consolidated returns with [REDACTED] (" [REDACTED] ") as the common parent. In an attempt to extend the statute of limitations on assessment for those years relative to liabilities resulting from flow-throughs from [REDACTED] to [REDACTED], the Service obtained consents in which " [REDACTED] " is entered on the name line, and which are signed by both " [REDACTED] (Parent)" and " [REDACTED] (Subsidiary)." ¹ Mr. Priest has reservations about sufficiency of those consents, and has requested our views. ²

¹ An officer common to both corporations signed on their behalf.

² The matter does not appear to be within the scope of responsibility of any Industry Counsel.

Both [REDACTED] and [REDACTED] are in bankruptcy. According to Mr. Priest, both are debtors-in-possession, with no trustee having been appointed in either of the bankruptcies.

We share Mr. Priest's concern about the consents. Pursuant to Treas. Reg. § 1.1502-6(a), the common parent and each subsidiary of the consolidated group is severally liable for the group's consolidated tax liability. However, the only entity with respect to which the consents in question purport to extend the statute is [REDACTED]. Although the consents are signed by "[REDACTED] (Parent)," arguably they do not extend the statute as to the entire group. Relying on those consents would involve the risk that the statute would run on all members of the group other than [REDACTED]. If [REDACTED] were unable to pay the liability (a likely prospect, given its bankruptcy), the Service would not be able to assess and collect from solvent members of the group.

Accordingly, in order to protect the Service's interest, we recommend that you obtain new consents naming [REDACTED] on the taxpayer name line, and signed by [REDACTED], the common parent, as agent for the consolidated group. If, before such consents are executed for the Service, a trustee is appointed in [REDACTED]'s bankruptcy, the trustee should also sign the consents.

We are forwarding a copy of this memorandum to the National Office for post-review. The turn-around time for such review is 10 days. We will notify you of the National Office's response when we receive it.

If we may be of further assistance in this matter, please contact the undersigned at telephone (336) 378-2123.

This memorandum may contain privileged information. Any unauthorized disclosure thereof may have an adverse effect on privileges, such as the attorney-client privilege. No disclosure of this document should be made without first contacting this office for our views.



ROSS A. ROWLEY
Senior Attorney (LMSB)